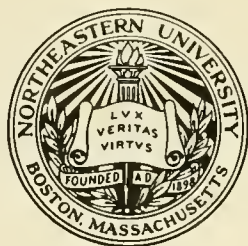


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STATEMENT OF INFORMATION SUBMITTED
ON BEHALF OF PRESIDENT NIXON

H E A R I N G S

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE
ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT
GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO
EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

Book I

EVENTS FOLLOWING
THE WATERGATE BREAK-IN

June 19, 1972-March 1, 1974



MAY-JUNE 1974

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COUNSEL TO THE PRESIDENT

JAMES D. ST. CLAIR, *Special Counsel to the President*

JOHN A. MCCAHILL, *Assistant Special Counsel*

MALCOLM J. HOWARD, *Assistant Special Counsel*

51-67900

FOREWARD

By Hon. Peter W. Rodino, Jr., Chairman
Committee on the Judiciary

On February 6, 1974, the House of Representatives adopted by a vote of 410-4 the following House Resolution 803:

RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

On May 9, 1974, as Chairman of the Committee on the Judiciary, I convened the Committee for hearings to review the results of the Impeachment Inquiry staff's investigation. The hearings were convened pursuant to the Committee's Impeachment Inquiry Procedures adopted on May 2, 1974.

These Procedures provided that President Nixon should be accorded the opportunity to have his counsel present throughout the hearings and to receive a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the members.

Mr. James D. St. Clair, Special Counsel to the President, was present throughout the initial presentation by the Impeachment Inquiry staff. Following the completion of the initial presentation the Committee resolved, in accordance with its Procedures, to invite the President's counsel to respond in writing to the Committee's initial evidentiary presentation. The Committee decided that the President's response should be in the manner of the Inquiry staff's initial presentation before the Committee, in accordance with Rule A of the Committee's Impeachment Inquiry Procedures, and should consist of information and evidentiary material, other than the testimony of witnesses, believed by the President's counsel to be pertinent to the inquiry. Counsel for the President was likewise afforded the opportunity to supplement its written response with an oral presentation to the Committee.

President Nixon's response was presented to the Committee on June 27 and June 28.

One notebook was furnished to the members of the Committee relating to Watergate and its aftermath. In this notebook a statement of information relating to a particular phase of the investigation was immediately followed by supporting evidentiary material which included copies of documents and testimony (much already on the public record) and transcripts of Presidential conversations.

The Committee on the Judiciary is working to follow faithfully its mandate to investigate fully and completely "whether or not sufficient grounds exist" to recommend that the House exercise its constitutional power of impeachment.

Consistent with this mandate the Committee voted to make public the President's response in the same form and manner as the Inquiry staff's initial presentation.

A handwritten signature in dark ink, appearing to read "Peter W. Rodino". The signature is written in a cursive, flowing style with some loops and flourishes.

July, 1974

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INTRODUCTORY NOTE

The material contained in this volume is presented in two sections. Section 1 contains a statement of information footnoted with citations to evidentiary material. Section 2 contains the same statement of information followed by the supporting material.

Each page of supporting evidence is labeled with the footnote number and a description of the document or the name of the witness testifying. Copies of entire pages of documents and testimony are included, with brackets around the portions pertaining to the statement of information.

In the citation of sources, "SSC" has been used as an abbreviation for the Senate Select Committee on Presidential Campaign Activities.

STATEMENT OF INFORMATION
SUBMITTED ON BEHALF
OF THE PRESIDENT

EVENTS FOLLOWING
THE WATERGATE BREAK-IN
June 19, 1972 -- March 1, 1974

1. On Monday, June 19, 1972, two days after the break-in of the Democratic National Committee Headquarters, Dean contacted Liddy and Liddy told Dean the men caught in the Democratic National Committee Headquarters were Liddy's men and that Magruder had pushed him to do it. Dean asked Liddy if anyone from the White House was involved and Liddy told Dean no.

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1a Dean 3 SSC 933..... 40

2. John Dean testified that on June 18, 1972, one day after the break-in of the Democratic National Committee Headquarters, "the cover-up was already in effect, in being." Dean testified he was in on the cover-up from the very beginning. Dean concurred with Senator Gurney that the cover-up "grew like Topsy, and Dean was a part of it." When questioned if he advised the President of what was going on, Dean responded that the first time he ever talked to the President was September 15, 1972, some three months later.

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3. Dean did not meet with the President until approximately three months after the Democratic National Committee Headquarters break-in. The allegation that Dean informed the President of an illegal cover-up on September 15, 1972, is based exclusively on the testimony of Dean. In testimony before the Senate Select Committee, Dean stated he was "certain after the September fifteenth meeting that the President was fully aware of the cover-up." However, in answering questions of Senator Baker, he modified this by agreeing that it was an "inference" of his. Later Dean admitted he had no personal knowledge that the President knew on September fifteenth about a cover-up of Watergate.

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3a Dean 4 SSC 1435.....	46
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3c Dean 4 SSC 1482.....	48

4. On May 22, 1973, the President stated that the bugging, and burglary of the Democratic National Committee was a complete surprise and that he had no prior knowledge that persons associated with his campaign had planned such activities. On March 21, 1973, John Dean told the President that no one at the White House knew of the plans to break in the Democratic National Committee.

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<u>4a</u> President's statement, May 22, 1973 (9 Weekly Compilations of Presidential Documents 696).....	50
<u>4b</u> <u>1</u> / Transcript, March 21, 1973, 10:12-11:55 a.m. p. 183.....	51

1 / Reference to transcripts are to submission of Recorded Presidential Conversations of April 30, 1974.

5. H. R. Haldeman and John Ehrlichman testified before the Senate Select Committee that they did not believe the President had prior knowledge of the break in plans. On March 21, 1973, John Ehrlichman told the President that, on the basis of information he had, no one in the White House had been involved, had notice, had knowledge, participated nor aided or abetted in any way in the Democratic National Committee burglary.

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5a Haldeman 7 SSC, 2883.....	54
5b Ehrlichman 6 SSC, 2769.....	55
5c Transcript, March 21, 1973, 5:20-6:01 p.m. p. 269.....	56

6. John Mitchell testified before the Senate Select Committee that the President did not know of either the burglary plans or the cover-up. Richard Moore testified before the Senate Select Committee that as a result of his meetings with the President and Dean on March 20, 1973, he concluded that the President had no knowledge that anyone in the White House was involved in the Watergate affair and John Dean told him as they departed that he had never told the President.

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<u>6a</u> Mitchell 4 SSC 1628.....	58
<u>6b</u> Moore 5 SSC 1944, 1945, 2067.....	59

7. After the second meeting in Mitchell's office on February 4, 1972, the modified Liddy plan was turned down and Dean concluded the plan was at end. Dean later met with Haldeman and advised Haldeman that the White House should have nothing to do with any such activity. Haldeman agreed.

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<u>7b</u> Dean 3 SSC 930.....	65

8. Magruder reported to Strachan that a "sophisticated political intelligence gathering system" had been approved. Strachan included this item in a memo containing approximately 30 other items directed to Haldeman. Attached at tab "H" of this report were examples of the type information being developed and identified by the code name "Sedan Chair." Magruder and Reisner testified "Sedan Chair" involved a disgruntled campaign worker from the Humphrey Pennsylvania Organization who passed information to Committee to Re-Elect the President. Porter deemed this activity surreptitious but not illegal.

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8b Magruder 2 SSC, 810, 848.....	70
8c Reisner 2 SSC, 499, 500.....	72
8d Porter 2 SSC, 670-671.....	74

9. Dean told the President on March 21, 1973 that Haldeman was assuming that the Committee to Re-Elect the President had an intelligence gathering operation conducted by Liddy that was proper. Dean told the President there was nothing illegal about "Sedan Chair".

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9a Transcript, March 21, 1973, 10:12-11:55 a.m. pp. 178-179.....	78
9b Transcript, March 21, 1973, 10:12-11:55 a.m. p. 180.....	80

10. Political Matters Memo #18 was prepared by Strachan and submitted to Haldeman on March 31, 1972. On April 4, 1972 Strachan prepared a talking paper including the mention of the "sophisticated intelligence gathering operation" for use by Haldeman in a meeting he was having with Mitchell on that day. The paper was returned to Strachan and filed with Memo #18 after Haldeman met with Mitchell. Strachan testified the subject of intelligence gathering was never raised again by Haldeman. Strachan is certain none of the Political Matters Memo had the "P" with a check mark through the "P" which was the procedure used for memos discussed in that form with the President.

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<u>10a</u> Strachan 6 SSC, 2452, 2454, 2488.....	82

11. Haldeman has testified that he and Mitchell did not discuss intelligence gathering activities with the President on April 4, 1972, and that he and Mitchell only reviewed with the President matters relating to the ITT-Kleindienst hearings and arguments of regional campaign responsibilities. Haldeman's notes of the meeting show no political intelligence gathering operations were discussed. The transcript of April 4, 1972, meeting between the President, Haldeman, and John Mitchell confirms that there was no discussion of campaign intelligence gathering activities.

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11a Haldeman 7 SSC, 2881	86
11b Transcript, April 4, 1972, 4:13-4:50 p.m., p. 1-31 (submitted to the Committee on the Judiciary on June 5, 1974).....	87

12. / The President had no knowledge of an attempt by the White House to cover-up involvement in the Watergate affair. Dean told the President that there were things Dean knew the President had no knowledge of.

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12a Transcript, March 21, 1973, 10:12-11:15 a.m.,	
p. 202.....	120

NOTE: Objection has been raised by Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

13. [The testimony of Gray before the Senate Select Committee establishes that the origin of the theory of Central Intelligence Agency involvement in the break-in of the DNC was in the FBI and that Gray communicated the theory to Dean on June 22, 1972. Dean confirmed that Gray informed him on June 22, 1972 that one of the FBI theories of the case was that it was a CIA operation and Dean testified that he reported this to Haldeman and Ehrlichman on June 23.

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13a Gray 9 SSC, 3451.....	122
13b Dean 3 SSC, 943.....	123

NOTE: Objection has been raised by Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

14. | Haldeman's testimony before the Senate Select Committee confirms that Dean reported to him the FBI's concern about CIA involvement, and that Haldeman in turn reported this to the President, who ordered Haldeman and Ehrlichman to meet with the CIA officials to insure that the FBI investigation not expose any unrelated covert operation of the CIA. The uncertainty regarding the possibility of uncovering CIA activities was recognized in a memo dated June 28, 1972 from Helms to Walters.

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14a	Haldeman 7 SSC, 2884.....	126
14b	Memo from Director Helms to Deputy Walters, June 28, 1972.....	127

15. The President stated on May 22, 1973, that it did seem possible to him that because of the involvement of former CIA personnel, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in. The President stated he was also concerned that the Watergate investigation might lead to an inquiry into the activities of the Special Investigations Unit. Gray testified that on July 6, 1972, the President told him to continue to conduct his aggressive and thorough investigation of the Watergate affair.

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15a	President's statement, May 22, 1973, (9 Weekly Compilations of Presidential Documents 693-697).....	130
15b	Gray 9 SSC, 3462.....	135

16. The President indicated that he was unaware that Gray had destroyed documents found in Hunt's safe when told by Henry Peterson on April 17, 1973.

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16a Transcript, April 17, 1973, 2:45-3:49 p.m., p. 1098.....	138
16b Transcript, April 16, 1973, 1:39-3:25 p.m., p. 910.....	139

17. / Dean did not disclose until November 2, 1973, while being questioned by attorneys of the Special Prosecutor's office, that he had personally destroyed documents from Hunt's safe.

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<u>17a</u>	Hearing, before the Honorable John J. Sirica in U.S. District Court Criminal No. 1827-72, November 5, 1973.....	142
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18. The President was unaware prior to March 21, 1973, that Magruder and Porter perjured themselves to a grand jury. On April 17, 1973, the President advised Ehrlichman and Haldeman against perjury.

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18a	Transcript, March 21, 1973, 10:12-11:55 a.m. pp. 182-183.....	146
18b	Transcript, April 17, 1973, 12:35-2:20 p.m. p. 1022.....	148

NOTE: Objection has been raised by Congresswoman Holtzman and Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

19. John Dean advised the President on March 21, 1973, of Hunt's demand for approximately \$120,000 for legal fees and family support. The President explored the option of meeting Hunt's demands so as to secure the time needed to consider alternative courses. The President was not concerned with the possible Watergate related disclosures, but rather with the disclosure of the National Security matters Hunt had been involved in as a member of the Plumbers.

The President advised Dean that the money could not be paid because it would look like a cover-up. At another point in the conversations the President requested advice as to whether or not the money should be paid. Later the President concludes that Hunt will blow the whistle no matter what is done for him.

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19a Transcript, March 21, 1973, 10:12-11:55 a.m., p. 224.....	150
19b Transcript, March 21, 1973, 10:12-11:55 a.m., p. 197.....	151
19c Transcript, March 21, 1973, 10:12-11:55 a.m., pp. 236-237.....	152
19d Transcript, March 21, 1973, 10:12-11:55 a.m., p. 242.....	154
19e Transcript, March 21, 1973, 10:12-11:55 a.m., p. 243.....	155

20. At the March 21, 1973, meeting the President after considering several options seized on the possibility of calling a new grand jury, thereby delaying Hunt's sentencing and making the immediate payment unnecessary as a means of buying time. Not once after this option was explored was there any suggestion that Hunt's demand be met.

The concluding page of the transcript of the March 21, 1973, morning meeting clearly demonstrates that the President recognizes that any blackmail and cover-up activities then in progress could not continue.

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20a Transcript, March 21, 1973, 10:12-11:55 a.m., pp. 245-246.....	158
20b Transcript, March 21, 1973, 10:12-11:55 a.m., p. 249.....	160

NOTE: Objection has been raised by Congresswoman Holtzman and Congressman Seiberling as to whole statement being a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

21. Neither of the participants of the March 21, 1973, morning meeting came away with any opinion that the President authorized payments to Hunt. Haldeman concluded that the President rejected payments to Hunt. Dean testified: "The money matter was left very much hanging at the meeting. Nothing was resolved."

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21a	Transcript, April 17, 1973, 12:35-2:20 p.m. p. 1034.....	162
21b	Dean 4 SSC, 1423.....	163

22. At the March 21, 1973, morning meeting while discussing the practicality of getting another grand jury the President told Dean and Haldeman to get Mitchell to come to Washington, so that Mitchell could meet with Haldeman, Ehrlichman and Dean.

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22a Transcript, March 21, 1973, 10:12-11:55 a.m.,
pp. 247-248 166

23. Haldeman and Dean left the meeting with the President at approximately 11:55 a.m. on March 21, 1973. Pursuant to the President's request Haldeman called Mitchell at approximately 12:30 p.m. and requested Mitchell come to Washington. Dean's testimony confirms this.

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23a Haldeman's Telephone Log.....	170
23b Haldeman, Watergate Grand Jury Testimony. January 30, 1974, p. 4-7.....	172
23c Dean 3 SSC, 1000.....	176

24. On March 21, 1973 Dean had a telephone conversation with LaRue concerning Hunt's request for money and Dean suggested LaRue call Mitchell. LaRue called Mitchell in the early afternoon of March 21, 1973 and advised Mitchell that he had a request for \$75,000 for Hunt's legal fees. Mitchell acknowledges that he advised LaRue to pay the money for attorney fees. During the March 21, 1973 late afternoon meeting with the President, Dean denied that he had spoken to either LaRue or Mitchell, when in fact he had spoken to both.

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24a Dean, Watergate Grand Jury Testimony, February 14, 1974, 16.....	178
24b LaRue, Watergate Grand Jury Testimony, February 13, 1974, 7-10.....	179
24c Mitchell, 4 SSC, 1630, 1631.....	183
24d Transcript, March 21, 1973, 5:20-6:01 p.m. p. 253.....	185

25. | Having received information on March 21, 1973 of possible obstruction of justice having taken place following the break-in of the DNC, the President promptly undertook an investigation into the facts. The record discloses that the President started his investigation the night of his meeting with Dean on March 21st, as confirmed by Dean in his conversation with the President on April 16, 1973. At the meeting with Mitchell and the others on the afternoon of March 22nd, the President instructed Dean to prepare a written report of his earlier oral disclosures.

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25a Transcript, April 16, 1973 10:00-10:40 p. 801...	188
25b Transcript, March 22, 1973, 1:57-3:43 p.m., p. 282-283.....	189
25c Transcript, " " " " " " , p. 309.....	191

26. Although Dean was instructed to go to Camp David and write a report on March 22, 1973 by the President, Dean denied this and later testified before the Senate Select Committee that he was never requested to write a report until Haldeman called him after he arrived at Camp David.

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26a Dean 4 SSC 1385	194

27. Just six days after Dean's disclosures, on March 27, 1973, the President met with Ehrlichman and Haldeman to discuss the evidence thus far developed and how best to proceed. Again the President stated his resolve that White House officials should appear before the grand jury. They confirmed to the President, as Dean had, that no one at the White House had prior knowledge of the Watergate break-in. Ehrlichman told the President that there wasn't "a scintilla of a hint" that Dean knew about this. " The President asked about the possibility of Colson having prior knowledge and Ehrlichman stated that Colson's response was "of total surprise... He was totally non-plussed, as the rest of us. "

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27a] Transcript, March 27, 1973, 11:10-1:30 p.m. p. 315...	196
27b] Transcript, " " " " " " p. 329...	197
27c] " " " " " " p. 331...	198

28. On April 8, 1973, the President met with Ehrlichman and Haldeman on board Air Force One and directed them to meet with Dean and urge him to go to the grand jury. Haldeman and Ehrlichman met with Dean that afternoon and at 7:33 p.m. Ehrlichman reported to the President that Dean indicated he would agree to go before the grand jury.

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<u>28a</u> 7 SSC 2757.....	200
<u>28b</u> Transcript, April 8, 1973, 7:33-7:37 p.m., p. 401..	201

29. Dean did in fact communicate his intention to testify before the grand jury to Mitchell and Magruder and told them he would not agree to support Magruder's previous testimony to the grand jury. Thereafter on April 14, 1973, Magruder appeared before the U. S. Attorneys and cooperated with them fully.

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29a Dean 3 SSC, 1006.....	204
29b Magruder 2 SSC, 808.....	205

30. On April 14, 1973, the President again met with Ehrlichman and Haldeman to review the results of three weeks investigation and to determine the future course of action. Based on Ehrlichman's report, the President concluded Mitchell should go before a grand jury. The President instructed Ehrlichman to see Magruder and tell him that he did not serve the President by remaining silent. The President told Ehrlichman that when he met with Mitchell to advise him that "the President has said let the chips fall where they may. He will not furnish cover for anybody." The President told Ehrlichman to tell Magruder to purge himself and tell this whole story.

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30a Transcript, April 14, 1973, 8:55-11:31 a.m., p. 445.....	208
30b Transcript, April 14, 1973, 8:55-11:31 a.m., p. 478.....	209
30c Transcript, April 14, 1973, 8:55-11:31 a.m., p. 507.....	210

31. On April 15, 1973, the President met with Attorney General Kleindienst. They considered who should be in charge of the continuing investigation. The President met with Assistant Attorney General Petersen on the afternoon of April 15, 1973, in his EOB office. At this meeting Petersen indicated there was no criminal case on Haldeman and Ehrlichman at this time. Having been told Liddy would not talk unless authorized by "higher authority" the President instructed Petersen to tell Liddy's counsel the President would confirm his urging of Liddy to cooperate.

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31a Transcript, April 15, 1973, 1:12-2:22 p.m., p. 742.....	212
31b Petersen 9 SSC 3632, 3875, 3876.....	213
31c Transcript, April 15, 1973, 8:25-8:26 p.m., p. 769.....	216

32. The President met with Dean on the morning of April 16, 1973, discussed with Dean his resignation, and advised him to be totally truthful in his explanations. The President asked Dean not to lie about the President either.

At this same meeting Dean explained to the President that O'Brien had been the one who relayed Hunt's demand, that Dean had informed Ehrlichman and Ehrlichman advised Dean to inform Mitchell which Dean did. Dean told the President that all along he had tried to make sure that anything he passed to the President didn't cause the President any personal problems.

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32a Transcript, April 16, 1973, 10:00-10:40 a.m., p. 805	218
32b Transcript, April 16, 1973, 10:00-10:40 a.m., p. 810	219
32c Transcript, April 16, 1973, 10:00-10:40 a.m., pp. 797-799	220

33. On April 27, Petersen reported to the President that Dean's lawyer was threatening that unless Dean got immunity, they would bring "the President in--not this case but in other things." The President told Petersen to use immunity if he needed to get the facts, but there would be no blackmail. It was not until June 25, 1973, while testifying before the Senate Select Committee that Dean stated the President had prior knowledge of the cover-up.

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33a Transcript, April 27, 1973,
5:37-5:43 p.m., p. 1261, 1276 224

34. On March 1, 1974, a federal grand jury returned an indictment against seven individuals charging all defendants with one count of conspiracy in violation of Title 18 U.S.C. Sec. 371 and charging some of the defendants with additional charges of perjury, making false declarations to a grand jury or court, making false statements to agents of the FBI and obstruction of justice.

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34a	Indictment, U. S. District Court for D. C., <u>U. S. v. John N. Mitchell et al.</u> , Cr. 74-110, March 1, 1974, p. 1-15.....	228
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STATEMENT OF INFORMATION
AND
SUPPORTING EVIDENCE
SUBMITTED ON BEHALF
OF THE PRESIDENT

EVENTS FOLLOWING
THE WATERGATE BREAK-IN
June 19, 1972 -- March 1, 1974

1. On Monday, June 19, 1972, two days after the break-in of the Democratic National Committee Headquarters, Dean contacted Liddy and Liddy told Dean the men caught in the Democratic National Committee Headquarters were Liddy's men and that Magruder had pushed him to do it. Dean asked Liddy if anyone from the White House was involved and Liddy told Dean no.

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1a Dean 3 SSC 933.....	40

fensive and stated that he was merely on his payroll as a consultant because Ehrlichman had so requested. He asked me to determine if Hunt was still on his payroll and I said I would check. Colson also expressed concern over the contents of Hunt's safe. Several weeks later—probably 4 or 5—I learned from Paul O'Brien, who was representing the reelection committee, that he had learned from Mr. Hunt's attorney, Mr. William Bittman, that Hunt and Colson spoke on the telephone over the weekend of June 17-18, and that Hunt had told Colson to get the materials out of his—Hunt's—office safe.

Mr. Hugh Sloan called me to tell me he was worried. At that time I knew of no reason why Mr. Sloan should be worried so I told him not to worry. He told me that he would like to meet with me and I told him that I was trying to find out what had happened and requested we meet in a few days. I do not recall the precise date we did meet.

I next contacted Liddy and asked him to meet with me. He said he would come to my office. As he came into the office I was on my way out. I suggested we take a walk. It was shortly before noon and we walked down 17th Street toward the Corcoran Gallery.

I will try to reconstruct the conversation to the best of my memory. While I cannot recall every detail, I do indeed recall the major items we discussed.

Mr. Liddy told me that the men who had been arrested in the DNC were his men and he expressed concern about them. I asked him why he had men in the DNC and he told me that Magruder had pushed him into doing it. He told me that he had not wanted to do it, but Magruder had complained about the fact that they were not getting good information from a bug they had placed in the DNC sometime earlier. He then explained something about the steel structure of the Watergate Office Building that was inhibiting transmission of the bug and that they had gone into the building to correct this problem. He said that he had reported to Magruder that during the earlier entry of the DNC offices they had seen documents—which I believe he told me were either Government documents or classified documents—and Magruder had told him to make copies of those documents.

Liddy was very apologetic for the fact that they had been caught and that Mr. McCord was involved. He told me that he had used Mr. McCord only because Magruder had cut his budget so badly. I asked him why one of the men had a check from Mr. Howard Hunt and he told me that these men were friends of Hunt and Hunt had put him in touch with them. I do not recall Liddy discussing any further involvement of Hunt, other than Hunt's putting him in touch with the Cubans. I asked him if anyone from the White House was involved and he told me no.

As the conversation ended he again expressed his apology and his concern about the men in jail. I told him I couldn't help and he said he understood. He also told me that he was a soldier and would never talk. He said if anyone wished to shoot him on the street, he was ready. As we parted I said I would be unable to discuss this with him further. He said he understood and I returned to my office.

After returning to my office I arranged a meeting with Ehrlichman in his office for mid-afternoon. Gordon Strachan came to my office shortly after I had met with Liddy. Strachan told me that he had been

2. John Dean testified that on June 18, 1972, one day after the break-in of the Democratic National Committee Headquarters, "the cover-up was already in effect, in being." Dean testified he was in on the cover-up from the very beginning. Dean concurred with Senator Gurney that the cover-up "grew like Topsy, and Dean was a part of it." When questioned if he advised the President of what was going on, Dean responded that the first time he ever talked to the President was September 15, 1972, some three months later.

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1357

Would you tell how you inherited the coverup?

Mr. DEAN. I didn't hear the Senator. Inherited?

Senator GURNEY. You said yesterday in response to questioning from Mr. Dash, you said that you inherited the coverup of Watergate.

Mr. DEAN. I had heard or inherited?

Senator GURNEY. I understand inherited.

Mr. DEAN. That is correct.

When I came back to the office on the 18th and talked to Mr. Strachan, I realized that the coverup was already in effect, in being, and I realized that when Mr. Strachan told me of the documents that he had destroyed and Mr. Haldeman's instruction, that there certainly wasn't going to be a revelation of the White House involvement in the matter. I didn't at that point in time know the potentials of the White House involvement.

Senator GURNEY. Was not one of the first meetings of the coverup held in John Mitchell's apartment on the 19th of June?

Mr. DEAN. Senator, I would say that the day of, to my knowledge, the day of the 19th at the White House was a very busy day. That the calls I received from Mr. Ehrlichman, from Mr. Colson, the meetings I had with Mr. Ehrlichman and then again later with Mr. Colson about the safe were long before I went to the meeting at Mr. Mitchell's apartment, which I do not recall was on the 19th or 20th. I do recall a meeting in Mr. Mitchell's office, but I do not recall specifically which day it was. I recall arriving late at the meeting, and I cannot recall with any specificity any of the discussions at the meeting.

Senator GURNEY. Well, what you are saying is then that these several phone calls you had with all of these people really had to do with at least the beginnings of the coverup, is that right?

Mr. DEAN. That is correct.

Senator GURNEY. Well, you were in on it from the beginning, were you not?

Mr. DEAN. Yes, sir.

Senator GURNEY. You really did not inherit anything. You were in on the sort of hatching of it, were you not?

Mr. DEAN. Senator, I might explain that what often happened in my relationship with my superiors at the White House, and I think I alluded to this yesterday, is that others would set the policy, for example, with the *Calley* case or the Lithuanian defector, how to deal with it, what was to be done.

Senator GURNEY. Who set the policy on the coverup?

Mr. DEAN. I would say the policy was just—I do not think it was a policy set. There was just no alternative at that point in time.

Senator GURNEY. It sort of grew like Topsy, and you were a part of it, is that not right?

Mr. DEAN. That is correct.

Senator GURNEY. Now, since this thing started out with such a flurry and a spate of phone calls and meetings between everybody, did you advise the President of what was going on?

Mr. DEAN. Senator, the first time I ever talked to the President was on September 15. There was one occasion that I recall before September 15, which was in late August, to the best of my recollection, and that certainly was not an occasion to talk to the President about anything because his former law partners were in the office, Mrs. Nixon was in the office, there were several notaries or one notary there, some

Mr. DEAN. Well, you would have to go back into the time sequence again. There was a request for any and all available cash, far before they started speaking of the \$350,000 cash fund, when Mr. Kalmbach was collecting the cash. Mr. Stans had some money that was used. They were looking anywhere they could look to find any available cash. It was at this point, I knew that I had the \$15,200 in my safe and I decided at that time that I was not going to let that money be used for that purpose, because I did not want to become further involved in that particular aspect of the coverup.

Mr. DASH. And you made that decision despite the fact that you had been a key figure in getting Mr. Kalmbach involved in the original payoff?

Mr. DEAN. That is correct.

Mr. DASH. Now, in your statement, you have described a number of meetings and activities occurring immediately after the arrest of the CRP burglars in the Democratic National Committee headquarters in the Watergate on June 17, 1972, and continuing for several months thereafter, involving such persons as Mr. Haldeman, Mr. Ehrlichman, Mr. Colson, Mr. Mardian, Mr. Mitchell, Mr. LaRue, Mr. Magruder, yourself, and others.

Isn't it your testimony that this flurry of activity represented a massive coverup operation to prevent the prosecutors, the FBI, and the public from learning of the involvement of high White House or CRP officials, either in the Watergate break-in or embarrassing earlier illegal activities of a similar nature such as the Ellsberg break-in?

Mr. DEAN. That is correct, Mr. Dash.

Mr. DASH. And did not this coverup require a number of strategies such as perjury and subordination of perjury of Magruder, Porter, and others, and the undermining of the judicial process and payoffs to indicted defendants to maintain their silence, thereby limiting the FBI inquiry so they would not stumble on other illegal intelligence activities of the White House?

Mr. DEAN. That is correct.

Mr. DASH. And is it not true that you played a role in all of these coverup activities?

Mr. DEAN. That is correct.

Mr. DASH. Did you do these things on your own initiative, Mr. Dean, or at the direction of anybody else?

Mr. DEAN. I would have to say that to describe it, I inherited a situation. The coverup was in operation when I returned to my office on Monday, the ninth, and it just became the instant way of life at that point in time and I participated in that and engaged in these activities along with the others.

I was taking instructions—

Mr. DASH. From whom were you taking instructions?

Mr. DEAN. I was taking instructions from Mr. Haldeman and Mr. Ehrlichman, I was taking instructions and suggestions from Mr. Mitchell and Mr. Mardian.

I was a conveyor of messages back and forth between each group and at times, I was making suggestions myself.

Mr. DASH. Mr. Dean, I don't think the record is clear from the statement. You held an impressive title, Counsel to the President, and I understand had quite a big office. But could you tell us just what in

3. Dean did not meet with the President until approximately three months after the Democratic National Committee Headquarters break-in. The allegation that Dean informed the President of an illegal cover-up on September 15, 1972, is based exclusively on the testimony of Dean. In testimony before the Senate Select Committee, Dean stated he was "certain after the September fifteenth meeting that the President was fully aware of the cover-up." However, in answering questions of Senator Baker, he modified this by agreeing that it was an "inference" of his. Later Dean admitted he had no personal knowledge that the President knew on September fifteenth about a cover-up of Watergate.

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Senator INOUE. Why, sir?

Mr. DEAN. I thought they were very incriminating to the President of the United States.

Senator INOUE. Mr. Chairman, this is not part of the questioning, but could you advise this committee what sort of information you received?

Mr. DEAN. Well, I have recalled most of it in my testimony regarding the conversation on clemency for Mr. Hunt, the million dollar conversation, when the President told me that it would be no problem to raise \$1 million on the 13th. I did not think documents like this should be around the White House, because the White House had a similar problem as far as information getting out.

Senator INOUE. Did you discuss this September 15 meeting with anyone at that time or at any time since?

Mr. DEAN. I believe when I came out of the meeting, I told Mr. Fielding of my office that I had spent about 30 or 40 minutes with the President and Mr. Fielding did not have full knowledge of my activities at this time. But I told him that fact that the meeting had occurred and that the President seemed very pleased with the job that I had been doing thus far. I think Mr. Fielding probably had a general awareness about the specifics of the fact that I was involved in assisting with the coverup.

Senator INOUE. You have indicated in your testimony that you were certain after the September 15 meeting that the President was fully aware of the coverup, did you not?

Mr. DEAN. Yes, sir.

Senator INOUE. And you further testified that you believed that you had on your spurs in handling the coverup by February 27, when you were told by the President that you would report to him directly. Is that not correct?

Mr. DEAN. I do not believe I used the word "my spurs." I think that was another characterization. I said I thought I had earned my stripes.

Senator INOUE. If that was the case, why did you feel it necessary on February 27 to tell the President that you had been participating in a coverup and, therefore, might be chargeable with obstruction of justice?

Mr. DEAN. Because on the preceding day, he had indicated to me that Mr. Haldeman and Mr. Ehrlichman were principals and I was wrestling with what he meant by that. I wanted him to know that I felt also that I was a principal. So I wanted him to be able to assess whether I could be objective in reporting directly to him on the matter.

Senator INOUE. If the President was aware on September 15 of the coverup, was he not aware that you were implicated also?

Mr. DEAN. I would think so, but I did not understand his remark at the time.

Senator INOUE. Then, why was it necessary on February 27 to advise him that you were guilty of obstruction of justice?

Mr. DEAN. Because as I said, Senator, when he mentioned the fact that Mr. Ehrlichman and Mr. Haldeman were principals, I did not understand what he meant. I wanted to make it clear to him that I felt I also had legal problems and I had been involved in obstruction of justice. Any time I was in the oval office, I did not want to withhold anything from the President at any time and felt that any informa-

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Mr. DEAN. The call came to my secretary, as I recall, and she said, "You have been asked to come to the oval office" so I do not recall who made the call but it was one of the secretaries who conveyed those types of messages.

Senator BAKER. All right, go ahead, sir.

Mr. DEAN. When I entered the office I can recall that—you have been in the office, you know the way there are two chairs at the side of the President's desk.

Senator BAKER. You are speaking of the oval office?

Mr. DEAN. Of the oval office. As you face the President on the left-hand chair Mr. Haldeman was sitting and they had obviously been immersed in a conversation and the President asked me to come in and I stood there for a moment.

He said, "Sit down" and I sat on a chair on the other side.

Senator BAKER. You sat in the right-hand chair?

Mr. DEAN. I sat on the right-hand chair.

Senator BAKER. That is the one he usually says no to, but go ahead.

Mr. DEAN. I was unaware of that. [Laughter.]

Senator BAKER. Go ahead, Mr. Dean.

Mr. DEAN. As I tried to describe in my statement, the reception was very warm and very cordial. There was some preliminary pleasantries, and then the next thing that I recall the President very clearly saying to me is that he had been told by Mr. Haldeman that he had been kept posted or made aware of my handling of the various aspects of the Watergate case and the fact that the case, you know, the indictments had now been handed down, no one in the White House had been indicted, they had stopped at Liddy.

Senator BAKER. Stop, stop, stop just for one second. Let's examine those particular words just for a second.

That no one in the White House had been indicted. Is that as near to the exact language—I don't know so I am not laying a trap for you, I just want to know.

Mr. DEAN. Yes, there was a reference to the fact the indictments had been handed down and it was quite obvious that no one in the White House had been indicted on the indictments that had been handed down.

Senator BAKER. Did he say that, though?

Mr. DEAN. Did he say that no one in the White House had been handed down? I can't recall it. I can recall a reference to the fact that the indictments were now handed down and he was aware of that and the status of the indictments and expressed what to me was a pleasure to the fact that it had stopped at Mr. Liddy.

Senator BAKER. Tell me what he said.

Mr. DEAN. Well, as I say, he told me I had done a good job—

Senator BAKER. No, let's talk about the pleasure. He expressed pleasure the indictments had stopped at Mr. Liddy.

Can you just for the purposes of our information tell me the language that he used?

Mr. DEAN. Senator, let me make it very clear the pleasure that it had stopped there is an inference of mine based on, as I told Senator Gurney yesterday, the impression I had as a result of the, of his, complimenting me.

Senator BAKER. But in an effort to summarize it and, believe me, I am not trying to distort the meaning of your testimony by summary, but, in effect, you drew inferences from the totality of this conversation and the circumstances and relationships as you knew it, you drew inferences from that that led you to believe that on September 15 the President knew something about at least the efforts to counter the Watergate and possibly, in fact, about Watergate itself.

Mr. DEAN. That is correct.

Senator BAKER. But there is no direct statement about Watergate, CRP involvement, the President's knowledge of it, or the coverup—there is no category 1 information about that?

Mr. DEAN. Other than as I have recited and I have chosen not to place interpretations on these, Senator.

Senator BAKER. Thank you, Mr. Dean.

I think that that information is very useful, then. You understand, Mr. Dean, that in the course of things, we are going to explain further the content of that meeting and the perceptions that the other parties had of that meeting.

Mr. DEAN. I understand.

Senator BAKER. As you know, Mr. Haldeman will be a witness before this committee. The only other person present was the President. I am not prepared to say at this point how we may be able to gain access to the President's knowledge and perception of that meeting. But in a three-way meeting, I think it is important to this committee that we have all the information we can get. So the information you have just given me in rather good detail will now be structured alongside with the rest of the record to test against the testimony of Mr. Haldeman and hopefully against statements by the President, in whatever manner that can be arranged.

Now, what is the time of your next meeting with the President?

Mr. DEAN. On this subject?

Senator BAKER. Yes, sir.

Mr. DEAN. There were certain events that led up to my next meeting and they were the events which occurred at La Costa, in which I, or following La Costa, in which I was requested by Mr. Haldeman when I returned from Florida—I had gone from California to Florida and had spent a week or so, just about a week, in Florida and when I returned on the 19th or 20th, Mr. Haldeman asked me to prepare an agenda. I think that that agenda is a rather important document along the line of questioning you are asking.

Senator BAKER. I would like to go into that.

Before you do, let me reiterate, the focus of my inquiry is on what did the President know—

Mr. DEAN. As I say, this agenda went directly to the President.

Senator BAKER [continuing]. And when did he know it.

Mr. DEAN. That is correct.

Senator BAKER. So as you go into your testimony and as you refer to the several documents that I believe you have before you, try to keep in mind that I am not at this moment talking about other matters and details. I am not talking about Ellsberg at this point, or the enemy list. I am talking about what the President knew. So tell me what

4. On May 22, 1973, the President stated that the bugging, and burglary of the Democratic National Committee was a complete surprise and that he had no prior knowledge that persons associated with his campaign had planned such activities. On March 21, 1973, John Dean told the President that no one at the White House knew of the plans to break in the Democratic National Committee.

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1 / Reference to transcripts are to submission of Recorded
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records having been removed with the change of administrations) and which bore directly on the negotiations then in progress. Additional assignments included tracing down other national security leaks, including one that seriously compromised the U.S. negotiating position in the SALT talks.

The work of the unit tapered off around the end of 1971. The nature of its work was such that it involved matters that, from a national security standpoint, were highly sensitive then and remain so today.

These intelligence activities had no connection with the break-in of the Democratic headquarters, or the aftermath.

I considered it my responsibility to see that the Watergate investigation did not impinge adversely upon the national security area. For example, on April 18, 1973, when I learned that Mr. Hunt, a former member of the Special Investigations Unit at the White House, was to be questioned by the U.S. Attorney, I directed Assistant Attorney General Petersen to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters. Subsequently, on April 25, 1973, Attorney General Kleindienst informed me that because the Government had clear evidence that Mr. Hunt was involved in the break-in of the office of the psychiatrist who had treated Mr. Ellsberg, he, the Attorney General, believed that despite the fact that no evidence had been obtained on Hunt's acts, a report should nevertheless be made to the court trying the Ellsberg case. I concurred, and directed that the information be transmitted to Judge Byrne immediately.

WATERGATE

The burglary and bugging of the Democratic National Committee headquarters came as a complete surprise to me. I had no inkling that any such illegal activities had been planned by persons associated with my campaign; if I had known, I would not have permitted it. My immediate reaction was that those guilty should be brought to justice, and, with the five burglars themselves already in custody, I assumed that they would be.

Within a few days, however, I was advised that there was a possibility of CIA involvement in some way.

It did seem to me possible that, because of the involvement of former CIA personnel, and because of some of their apparent associations, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in.

In addition, by this time, the name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted to the fact that he had previously been a member of the Special Investigations Unit in the White House. Therefore, I was also concerned that the Watergate investigation might well lead to an inquiry into the activities of the Special Investigations Unit itself.

In this area, I felt it was important to avoid disclosure of the details of the national security matters with which the group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive.

I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal—and not at that time having any idea of the extent of political abuse which Watergate reflected—I also had to be deeply concerned with ensuring that neither the covert operations of the CIA nor the operations of the Special Investigations Unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit—and to see that this was personally coordinated between General Walters, the Deputy Director of the CIA, and Mr. Gray of the FBI. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way.

On July 6, 1972, I telephoned the Acting Director of the FBI, L. Patrick Gray, to congratulate him on his successful handling of the hijacking of a Pacific Southwest Airlines plane the previous day. During the conversation Mr. Gray discussed with me the progress of the Watergate investigation, and I asked him whether he had talked with General Walters. Mr. Gray said that he had, and that General Walters had assured him that the CIA was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him to press ahead with his investigation.

It now seems that later, through whatever complex of individual motives and possible misunderstandings, there were apparently wide-ranging efforts to limit the investigation or to conceal the possible involvement of members of the Administration and the campaign committee.

I was not aware of any such efforts at the time. Neither, until after I began my own investigation, was I aware of any fundraising for defendants convicted of the break-in at Democratic headquarters, much less authorize any such fundraising. Nor did I authorize any offer of executive clemency for any of the defendants.

In the weeks and months that followed Watergate, I asked for, and received, repeated assurances that Mr. Dean's own investigation (which included reviewing files and sitting in on FBI interviews with White House personnel) had cleared everyone then employed by the White House of involvement.

In summary, then:

(1) I had no prior knowledge of the Watergate bugging operation, or of any illegal surveillance activities for political purposes.

(2) Long prior to the 1972 campaign, I did set in motion certain internal security measures, including legal

were going to be confronted with and Liddy was charged with doing this. We had no knowledge that he was going to bug the DNC.

P The point is, that is not true?

D That's right.

P Magruder did know it was going to take place?

D Magruder gave the instructions to be back in the DNC.

P He did?

D Yes.

P You know that?

D Yes.

P I see. O.K.

D I honestly believe that no one over here knew that. I know that as God is my maker, I had no knowledge that they were going to do this.

P Bob didn't either, or wouldn't have known that either. You are not the issue involved. Had Bob known, he would be.

D Bob -- I don't believe specifically knew that they were going in there.

P I don't think so.

D I don't think he did. I think he knew that there was a capacity to do this but he was not given the specific direction.

P Did Strachan know?

5. H. R. Haldeman and John Ehrlichman testified before the Senate Select Committee that they did not believe the President had prior knowledge of the break in plans. On March 21, 1973, John Ehrlichman told the President that, on the basis of information he had, no one in the White House had been involved, had notice, had knowledge, participated nor aided or abetted in any way in the Democratic National Committee burglary.

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been involved in Watergate. I was not at all surprised to hear the President say this at the press conference since it was thoroughly consistent with everything that Dean had told me, and I, therefore, find it hard to understand why Mr. Dean now professes to have had such great surprise when he heard this statement.

COVERUP

In these hearings and in the general discussion of Watergate, the word "coverup" has come to have a broad and very ill-defined meaning. As John Dean said, the coverup had a broad range. Anything that might cause a problem came within the coverup.

Definition by usage has now come to connote illegal or improper activities—although some steps were taken to contain the Watergate case in several perfectly legal and proper aspects.

One, as the President has stated, was to avoid the Watergate investigation possibly going beyond the facts of the Watergate affair itself and into national security activities totally unrelated to Watergate.

Another was to avoid or at least reduce adverse political and publicity fallout from false charges, hearsay, and so on, arising from various activities in connection with Watergate, such as the Justice Department investigation, the Democratic National Committee suit, the Common Cause suit, the Patman hearings, and the Ervin committee hearings.

A third was concern for distortion or fabrication of facts in the heat of a political campaign that would unjustly condemn the innocent or prevent discovery of the guilty.

The containment effort, as I would use the term, did not contemplate or involve any acts in obstruction of justice. To the contrary, while hoping to contain the Watergate inquiry to the facts of Watergate, there was a concurrent effort to try to get the true facts of Watergate and get them out to the public. The President frequently cautioned against any coverup of Watergate or even the appearance of a coverup.

On the basis of testimony now before this committee, it appears that there also was an effort to cover up, as well as to contain. This coverup appears to have involved illegal and improper activities, such as perjury, payments to defendants for their silence, promises of Executive clemency, destruction of evidence, and other acts in an effort to conceal the truth regarding the planning and commission of crimes at the Watergate.

The critical question then becomes the determination of who committed these acts, who directed them, who was aware of them.

I committed no such acts and directed no such acts and I was aware of no such acts until March of this year, when the President intensified his personal investigation into the facts of the Watergate. I am convinced that the President had no awareness of any such acts until March of this year.

The question is asked: "How could the President not have known?" Very easily. Reverse the question. How could the President have known?

Only if he were directly involved himself or if he were told by someone who was either directly involved or had knowledge. The fact

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Mr. EHRLICHMAN. In that I think you will see that it's my conclusion that he acted in the best of faith thinking that he was simply engaged in raising money for the defense fund purposes that he has testified to.

Senator MONTROYA. All right. Then how many interviews did you conduct as a result of your being commissioned by the President to go into this?

Mr. EHRLICHMAN. Well, let me refer to my list again. Ten.

Senator MONTROYA. Ten?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. How long did it take you to conduct these interviews?

Mr. EHRLICHMAN. Well, I did this in the period between April 5 and April 14.

Senator MONTROYA. The President indicated that he had also——

Mr. EHRLICHMAN. Excuse me, I am sorry, Senator, April 15, I beg your pardon because I saw Mr. Strachan at 9 o'clock on Sunday morning the 15th.

Senator MONTROYA. All right.

Now, what was this statement of the President all about when he stated that on March 21 as a result of serious charges "which came to my attention, some of which were publicly reported, I began intensive new inquiries into this whole matter."

What did he mean by that?

Mr. EHRLICHMAN. Well, I think what he meant by that was the series of events starting March 21 and culminating April 17 which would have been his conversation with Mr. Dean on the 21st; the McCord letter to Judge Sirica on what, the 23d or whatever it was; his sending Mr. Dean to Camp David to write out his statement; Mr. Dean's return without the statement; his turning the investigation over, taking it from Mr. Dean, his turning the inquiry over to me; my efforts to talk to witnesses through this time; the parallel efforts, and I don't mean to in any way diminish the efforts of the investigators in the Department of Justice and in the prosecutor's office who were doing an extraordinarily effective job right at this time.

You see, when I talked to Mr. Magruder, for instance, he had already been to see the U.S. attorney and told him everything as a result of their efforts. So these were all parallel efforts going on and there was a lot of reporting. The President had his meeting with the Attorney General and Mr. Petersen on that Sunday, and they compared notes as to all of these investigations, and then this all came to a head on that following Tuesday.

Senator MONTROYA. Would you then say that up until March you were convinced, and the President was convinced in the White House that there was no White House involvement?

Mr. EHRLICHMAN. Yes, sir.

Senator MONTROYA. You were convinced up to that time?

Mr. EHRLICHMAN. Yes, sir, and I was saying that all across the country because I believed it.

Senator MONTROYA. And you kept saying this to the President on the basis of information which you were receiving from Mr. Dean and others?

Mr. EHRLICHMAN. In the best of faith, yes, sir.

Right, right. However in terms of this, what about a solution? We are damned by the courts before Ervin even gets started.

E The only thing we can say is that we have investigated it backwards and forwards in the White House, and have been satisfied on the basis of the report we had that nobody in the White House has been involved in a burglary, nobody had notice of it, knowledge of it, participated in the planning, or aided or abetted it in any way. And it happens to be true as for that transaction.

P John, you don't think that is enough?

D No, Mr. President.

E Let's try another concomitant to that. Supposing Mitchell were to step out on that same day to say, "I have been doing some investigation at 1701 and I find -- so and so and so and so."

P Such as what?

E I don't know what he would say, but that he wanted to be some kind of a spokesman for 1701.

P What the hell does one disclose that isn't doing to blow something? I don't have any time. I am sorry. I have to leave. Well, good-bye. You meet what time tomorrow?

H I am not sure. In the morning probably.

6. John Mitchell testified before the Senate Select Committee that the President did not know of either the burglary plans or the cover-up. Richard Moore testified before the Senate Select Committee that as a result of his meetings with the President and Dean on March 20, 1973, he concluded that the President had no knowledge that anyone in the White House was involved in the Watergate affair and John Dean told him as they departed that he had never told the President.

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I know the individual, I know his reactions to things, and I have a very strong feeling that during the period of time in which I was in association with him and did talk to him on the telephone, that I just do not believe that he had that information or had that knowledge; otherwise, I think the type of conversations we had would have brought it out.

Mr. DASH. Generally, is it fair to say that much of your opinion that you express is based on your faith in the President and your knowledge of the man, rather than any specific statement the President made to you or that you made to the President?

Mr. MITCHELL. Well, I subscribe to the first two. I do have faith in the President and I do think I have knowledge of the man and I do think there were enough discussions in the area, in the general area, to the point where I think the general subject matter would have come out if the President had had knowledge.

Mr. DASH. Well, now, Mr. Mitchell, you did become aware, as you have indicated, somewhere around June 21 or 22, when you were briefed or debriefed by Mr. LaRue and Mr. Mardian about the so-called—as you described it, the White House horrors of the Liddy operation and the break-in. Did you, yourself, as the President's adviser and counselor, tell the President what you knew or what you learned?

Mr. MITCHELL. No, sir, I did not.

Mr. DASH. Why didn't you?

Mr. MITCHELL. Because I did not believe that it was appropriate for him to have that type of knowledge, because I knew the actions that he would take and it would be most detrimental to his political campaign.

Mr. DASH. Could it have been actually helpful or healthy, do you think?

Mr. MITCHELL. That was not my opinion at the particular time. He was not involved; it wasn't a question of deceiving the public as far as Richard Nixon was concerned, and it was the other people that were involved in connection with these activities, both in the White House horrors and the Watergate. I believed at that particular time, and maybe in retrospect, I was wrong, but it occurred to me that the best thing to do was just to keep the lid on through the election.

Mr. DASH. Then it is your testimony that you in fact did not say anything to the President at that time—

Mr. MITCHELL. No, sir, I did not.

Mr. DASH. So whether the President had any knowledge of it, it certainly couldn't have come from his lack of knowledge or knowledge, from any statement that you made to him?

Mr. MITCHELL. That is correct, Mr. Dash.

Mr. DASH. Now, were you aware of the fact that actually prior to Magruder's testimony, Mr. Dean rehearsed Mr. Magruder for his testimony before the grand jury?

Mr. MITCHELL. I do not recall that. Mr. Dash, if you are talking about the testimony that took place on the—

Mr. DASH. In August.

Mr. MITCHELL. In August, the second appearance.

Mr. DASH. The second appearance.

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On March 19, I was called to meet with the President and Mr. Dean in the President's Executive Office Building office. The President reiterated his desire to get out a general statement in advance of the hearings. He asked us to be thinking about ways that this could be done. This would include or could include issuing a full statement or "White Paper"; he was also interested in our thoughts about ways to present our story to the Senate in terms of possible depositions, affidavits, or possible conferences or meetings which would give the Senate all the information it wished but which would not cut across the separation of powers. He asked Dean and me to consider ways to do this.

Now, late on March 19, 1973, or possibly on March 20—before we met later that day with the President—Mr. Dean told me that Howard Hunt was demanding that a large sum of money be given to him before his sentencing on March 23, and that he wanted the money by Wednesday, the 21st. If the payment were not made, Dean said, Hunt had threatened to say things that would be very serious for the White House. I replied that this was pure blackmail, and that Dean should turn it off and have nothing to do with it. I could not imagine, I said, that anything that Hunt could say would be as bad as entering into a blackmail arrangement. I don't recall Mr. Dean's exact words, but he expressed agreement.

This revelation was the culmination of several other guarded comments Mr. Dean had made to me in the immediately preceding days. He had said that he had been present at two meetings attended by Messrs. Mitchell, Magruder, and Liddy before the bugging arrests, during which Liddy had proposed wild schemes that had been turned down—specifically espionage, electronics surveillance, and even kidnapping. He said that the Watergate location had not been mentioned, and that he had "turned off the wild schemes." I believed then and believe today that Mr. Dean had no advance knowledge of the Watergate bugging and break-in. In addition, he said that if he ever had to testify before the grand jury, his testimony would conflict with Mr. Magruder's, and that he had heard that if Magruder faced a perjury charge he would take others with him.

Mr. Dean had also mentioned to me in these days in March that earlier activities of Messrs. Hunt and Liddy—not directly related to Watergate—could be seriously embarrassing to the administration if they ever came to light. He had also implied to me that he knew of payments being made to the defendants for litigation expenses, and Hunt's explicit blackmail demand raised serious questions in my mind as to the purpose of these payments.

This brings me to the afternoon of March 20, when Mr. Dean and I met with the President in the Oval Office. The meeting lasted about half an hour. The President again stated his hope that we could put out a full statement in advance of the hearings, and again he expressed his desire that we be forthcoming, as he put it. He made some comparisons as to our attitude and the attitude of previous administrations, and he wanted us to make sure that we were the most forthcoming of all.

As I sat through the meeting of March 20 with the President and Mr. Dean in the Oval Office, I came to the conclusion in my own mind that the President could not be aware of the things that Dean was worried about or had been hinting at to me, let alone Howard Hunt's

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blackmail demand. Indeed, as the President talked about getting the whole story out—as he had done repeatedly in the recent meetings—it seemed crystal clear to me that he knew of nothing that was inconsistent with the previously stated conclusion that the White House was uninvolved in the Watergate affair, before or after the event.

As we closed the door of the Oval Office and turned into the hall, I decided to raise the issue directly with Mr. Dean. I said that I had the feeling that the President had no knowledge of the things that were worrying Dean. I asked Dean whether he had ever told the President about them. Dean replied that he had not, and I asked whether anyone else had. Dean said he didn't think so. I said, and I use quotation marks to indicate the substance, and I think these are almost my precise words—I said, "Then the President isn't being served, he is reaching a point where he is going to have to make critical decisions and he simply has to know all the facts. I think you should go in and tell him what you know, you will feel better, it will be right for him, and it will be good for the country."

I do not recall whether Dean told me he would take action or not, but I certainly had the impression that he was receptive. In any event, the question was resolved that very evening when I received a call at home sometime after dinner and it was Mr. Dean, who said that the President had just phoned him and that he had decided that this was the moment to speak up. He said that he told the President that things had been going on that the President should know about and it was important that Dean see him alone and tell him. Dean said that the President readily agreed and told Dean to come in the following morning. I congratulated Mr. Dean and wished him well.

The next day, March 21, Mr. Dean told me that he had indeed met with the President at 10 o'clock and had talked with him for 2 hours and had in his words, "Let it all out." I said, "Did you tell him about the Howard Hunt business?" Dean replied that he had told the President everything. I asked him if the President had been surprised and he said yes. I say he said yes in terms of his response; whether yes is the exact words, but it was an affirmative statement.

Following this critical meeting on March 21, I had several subsequent meetings and telephone conversations with Mr. Dean alone, as well as several meetings with the President which Mr. Dean did not attend. I do not dispute Mr. Dean's account of the meetings between us as to any substantive point, and I have no direct knowledge of what transpired in Mr. Dean's subsequent meetings with the President. But nothing said in my meetings or conversations with Mr. Dean or my meetings with the President suggests in any way that before March 21 the President had known—or that Mr. Dean believed he had known—of any involvement of White House personnel in the bugging or the coverup. Indeed, Mr. Dean's own account that he and I agreed on the importance of persuading the President to make a prompt disclosure of all that the President had just learned is hardly compatible with a belief on Mr. Dean's part that the President himself had known the critical facts all along. In one of my talks with the President, the President said he had kept asking himself whether there had been any sign or clue which should have led him to discover the true facts earlier. I told him that I wished that I had been more skeptical and inquisitive so that I could have served the Presidency better.

Now, are you saying that this entry is not an accurate reflection of that meeting?

Mr. MOORE. Well, some of it is reasonably accurate and some of it I can't recall.

For instance, it does refer to that suggestion about challenging the committee to its own investigation, which I stated. I think I stated in various languages, various words at various times, that the President indicated his desire to get the whole statement out about the whole thing and that we agreed. I think probably—I don't know whether Mr. Dean raised the question about waiting until after the sentencing, but there was, I recall no firm decision on that.

Mitchell's problems with the grand jury—grand jury and Vesco—I don't think there was any discussion of that. I don't know about whether Mr. Dean reported something going up there or something. I don't know. I don't recall at that meeting and I wonder whether the long and short of it was whether Mr. Dean's logs show whether Mr. Dean had another meeting with the President that day. Maybe you have something there. And I am not sure whether we got there at the same time.

Mr. LENZNER. Let me ask you this, Mr. Moore.

You did testify that when you left the Oval Office on March 20, I concluded the President could not be aware of the things that Mr. Dean was worried about. Now, did that include, for example, the threat by Mr. Hunt to blackmail the White House?

Mr. MOORE. Yes.

Mr. LENZNER. Did it also include the earlier activities of Mr. Hunt and Mr. Liddy that Mr. Dean had also indicated could be embarrassing to the White House?

Mr. MOORE. I had no laundry list in my mind. I had—except the Howard Hunt matter, but the general feeling that the man in that Oval Office, who was telling us so strongly that anything anybody knew should be disclosed as soon as possible and we should get the story out, and he had said it before, that this was utterly incompatible with his having knowledge, prior knowledge of any of these things, and that is what I said, when I left I said, "John," I pointed into that room, I said, "the President doesn't know the kind of things that you are talking about and worrying about. Have you told him," and so forth.

You have heard the story.

Mr. LENZNER. Yes, sir.

Mr. MOORE. And it was a sense that this man with this frame of mind and with a desire to tell the whole story, whatever it was, didn't know the whole story, didn't have anything of the whole story. That was my conviction.

Mr. LENZNER. And I take it including the things done. He was telling you about Hunt and Liddy's activities I think—

Mr. MOORE. The whole field of suspicion and knowledge and problem that seem to be lying there.

Mr. LENZNER. Mr. Moore, do you agree now that your understanding of the President's information and knowledge was basically incorrect? That he did, in fact, have information by that meeting on March 20 concerning Mr. Strachan and also possible involvement in Watergate

7. After the second meeting in Mitchell's office on February 4, 1972, the modified Liddy plan was turned down and Dean concluded the plan was at end. Dean later met with Haldeman and advised Haldeman that the White House should have nothing to do with any such activity. Haldeman agreed.

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I assumed the Liddy plan was dead in that it would never be approved. I recall Liddy coming into my office in late February or early March on a matter relating to the election laws. He started to tell me that he could not get his plan approved and I reminded him that I would not discuss it with him. He stopped talking about it, and we went on with our business.

I have thought back over the sequence of events and tried to determine if I in any way encouraged Mr. Liddy and his intelligence plans. I am certain of this—I did not encourage him to develop illegal techniques, because I was unaware he was developing such plans.

Between the meeting in Mitchell's office on February 4, 1972, and June 19, 1972, I had no knowledge of what had become of Liddy's proposal. I did receive a memorandum from Magruder on March 26, 1972 that indicated that Liddy was doing some investigative work for Magruder, but nothing that appeared illegal. Let me explain.

During the first week of March 1972, Larry Higby, Haldeman's assistant, called me to request for Haldeman any information that Caulfield could come up with regarding the funding of the Democratic Convention in Miami. On March 15, 1972, I forwarded a newspaper article that Caulfield had discovered on the subject. Later that day Magruder brought to me a copy of a memorandum from Liddy to Mitchell regarding an investigation Liddy had conducted—using Howard Hunt—in Florida. I called Higby and he said that Magruder had already given him a copy. I told Higby that I did not see anything illegal by the Democrats based on the information in the memorandum. I made a notation on the bottom of the memorandum from Mr. Liddy, but I did nothing further and heard nothing further from Higby on the subject. I have submitted to the committee the documents I have just referred to.

[The documents referred to were marked exhibit No. 34-14.*]

Mr. DEAN. I shall now turn to the events following the Watergate incident of June 17, 1972, and begin by telling the committee how I first learned of the incident.

I will skip the first part here explaining how I ended up being out of the country when the decision was made in late May and returned on June 18, from the Far East.

FIRST KNOWLEDGE OF WATERGATE INCIDENT

In late May of 1972 the Bureau of Narcotics and Dangerous Drugs asked me to deliver a graduation address at its Training School in Manila, Philippines, on Saturday, June 17, 1972. I notified Mr. Alex Butterfield, pursuant to White House procedures for staff contemplating foreign travel, on June 7, and informed Mr. Butterfield that I planned to depart on June 14 and return on June 18 and that the trip had been cleared by the State Department, the National Security Council, and Bud Krogh (who had responsibility for the drug program on the White House Domestic Council). Mr. Butterfield also approved the trip and I departed for Manila on June 14.

*See p. 1151.

NOTE.—Indented matter represents portions of Mr. Dean's prepared statement which were omitted or summarized in his presentation.

cratic Convention. Mr. Liddy concluded his presentation by saying that the plan would cost approximately \$1 million.

I do not recall Magruder's reaction during the presentation plan because he was seated beside me but I do recall Mitchell's reaction to the "Mission Impossible" plan. He was amazed. At one point I gave him a look of bewilderment and he winked. Knowing Mitchell, I did not think he would throw Liddy out of the office or tell him he was out of his mind, rather he did what I expected. When the presentation was completed, he took a few long puffs on his pipe and told Liddy that the plan he had developed was not quite what he had in mind and the cost was out of the question. He suggested to Liddy he go back and revise his plan, keeping in mind that he was most interested in the demonstration problem.

I remained in Mitchell's office for a brief moment after the meeting ended, as the charts were being taken off the easel and disassembled and Mitchell indicated to me that Mr. Liddy's proposal was out of the question. I joined Magruder and Liddy and as we left the office I told Liddy to destroy the charts. Mr. Liddy said that he would revise the plans and submit a new proposal. At that point I thought the plan was dead, because I doubted if Mitchell would reconsider the matter. I rode back to my office with Liddy and Magruder, but there was no further conversation of the plan.

The next time I became aware of any discussions of such plans occurred, I believe, on February 4, 1972. Magruder had scheduled another meeting in Mr. Mitchell's office on a revised intelligence plan. I arrived at the meeting very late and when I came in, Mr. Liddy was presenting a scaled down version of his earlier plan. I listened for a few minutes and decided I had to interject myself into the discussions. Mr. Mitchell, I felt, was being put on the spot. The only polite way I thought I could end the discussions was to inject that these discussions could not go on in the Office of the Attorney General of the United States and that the meeting should terminate immediately.

At this point the meeting ended. I do not know to this day who kept pushing for these plans. Whether Liddy was pushing or whether Magruder was pushing or whether someone was pushing Magruder, I do not know. I do know, in hindsight, that I should have not been as polite as I was in merely suggesting that Liddy destroy the charts after the first meeting. Rather, I should have said forget the plan completely. After I ended the second meeting, I told Liddy that I would never again discuss this matter with him. I told him that if any such plan were approved, I did not want to know. One thing was certain in my mind, while someone wanted this operation, I did not want any part of it, nor would I have any part of it.

After this second meeting in Mitchell's office, I sought a meeting with Mr. Haldeman to tell him what was occurring, but it took me several days to get to see him. I recall that Higby got me into Haldeman's office when another appointment had been canceled or postponed. I told Haldeman what had been presented by Liddy and told him that I felt it was incredible, unnecessary, and unwise. I told him that no one at the White House should have anything to do with this. I said that the reelection committee will need an ability to deal with demonstrations, it did not need bugging, mugging, prostitutes, and kidnapers. Haldeman agreed and told me I should have no further dealings on the matter.

8. Magruder reported to Strachan that a "sophisticated political intelligence gathering system" had been approved. Strachan included this item in a memo containing approximately 30 other items directed to Haldeman. Attached at tab "H" of this report were examples of the type information being developed and identified by the code name "Sedan Chair." Magruder and Reisner testified "Sedan Chair" involved a disgruntled campaign worker from the Humphrey Pennsylvania Organization who passed information to Committee to Re-Elect the President. Porter deemed this activity surreptitious but not illegal.

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that Mr. Mitchell and Mr. Dean were shocked by Liddy's plan; Mr. Magruder's staff man, Gordon Liddy, was apparently quite humiliated, and nothing was approved. In other words, if those meetings were routinely reported to Mr. Haldeman, as evidence of Mr. Magruder's administrative ability and judgment, the January and February meetings would not very likely inspire the confidence of Mr. Haldeman or the President.

Yet, Mr. Magruder testified that "as he recalled" he returned to his office after both these embarrassing meetings and routinely called Mr. Haldeman's staff assistant, me, and told me about his blunder, presumably so that I could inform Mr. Haldeman. That testimony is difficult to reconcile with good sense. Presumably, Mr. Magruder knew that Mr. Dean would report on the meetings to Mr. Haldeman—as Mr. Dean has testified he did—why would Mr. Magruder want two people reporting the same disaster to Mr. Haldeman?

It is true, however, that Mr. Magruder called me after he returned from the March 30, 1972, meeting at Key Biscayne with Mr. Mitchell and Mr. LaRue and reported on about 30 major campaign decisions. Each of these decisions was briefly described in that rather short phone conversation. During this call, he told me, and I am repeating his words rather precisely: "A sophisticated political intelligence-gathering system has been approved with a budget of 300." Unfortunately he neither gave me, nor did I ask for any further details about the subject.

Soon thereafter I wrote one of my regular "political matters" memos for Mr. Haldeman. This particular memo for early April was 8 to 10 pages long with more than a dozen tabs or attachments, but it contained only one three-line paragraph on political intelligence. That paragraph read almost verbatim as Mr. Magruder had indicated to me over the phone. I wrote in the memo to Mr. Haldeman—Again this is almost a quote:

Magruder reports that 1701 now has a sophisticated political intelligence-gathering system with a budget of 300. A sample of the type of information they are developing is attached at tab "H."

At tab "H", I enclosed a political intelligence report which had been sent to me from the committee. It was entitled Sedan Chair II. This report and two others somewhat like it that I had received began with a statement such as, "A confidential source reveals" or "a reliable source confidentially reports." This was followed by a summary of some political information.

In April 1972, I was mainly interested in reporting to Mr. Haldeman on those 30 campaign decisions and other relevant political items. I did not give much thought to what Mr. Magruder meant by "sophisticated political intelligence-gathering system." Nor did I give much thought to the real identity of Sedan Chair II, but I remember that the information dealt with Senator Humphrey's Pennsylvania organization.

However, on June 17, 1972, and afterward, as the news began unfolding about the break-in at the Democratic National Committee, I certainly began to wonder who else but people from 1701 could have been involved. I suspected that maybe the Watergate break-in was part of the sophisticated political intelligence operation Mr. Magruder had

that would strike me as far more sensitive a matter to send through the normal messenger channels than some file which other witnesses have indicated was not patently illegal on its face.

Mr. DASH. In other words, what you are saying is that you never did see the Gemstone file, Mr. Magruder never invited you over to see it, and that prior to March 30, you had no knowledge of any so-called Liddy intelligence plan?

Mr. STRACHAN. That is correct.

Mr. DASH. Now, did that change, at least after March 30?

If it did, could you tell us how it changed?

Mr. STRACHAN. Yes; I was aware that Mr. Magruder would be going down to Key Biscayne to review several campaign decisions that had accumulated during John Mitchell's working on the ITT problem. He called me up in an apparently fairly brief telephone conversation and reviewed the 30 or so pending campaign decisions. I took notes on that telephone conversation and prepared shortly thereafter a political matters memorandum for Mr. Haldeman, summarizing that telephone conversation as well as other information.

Mr. DASH. And what did that include? I mean did it include a Liddy intelligence plan?

Mr. STRACHAN. Yes; Mr. Magruder told me that a sophisticated political intelligence gathering system had been approved and I reported that to Mr. Haldeman.

Mr. DASH. Were you aware that that was one of the items for decision that went down to Key Biscayne with Mr. Magruder?

Mr. STRACHAN. No; I was not.

Mr. DASH. So that it was after he came back that he reported that to you?

Mr. STRACHAN. That is correct.

Mr. DASH. Can you recall approximately when he made that report to you?

Mr. STRACHAN. Well, it was shortly thereafter, I would guess either Friday, March 31, maybe Saturday. My secretary recalls having typed the memorandum on Friday.

Mr. DASH. And it is clear in your mind that Mr. Magruder reported that Mr. Mitchell had in fact approved a sophisticated intelligence plan?

Mr. STRACHAN. Well, I concluded that Mr. Mitchell had approved it. I believe that when Mr. Magruder was going through the decisions and the way I would usually report it to Mr. Haldeman would be that Mr. Magruder reports that Mr. Mitchell has approved the following matters, and I would put a colon, and then I would list the items.

Mr. DASH. But did you do it with regard to this plan?

Mr. STRACHAN. Yes; that was one of the 30 items that was listed.

Mr. DASH. I think in your statement you referred to a sophisticated intelligence system with a budget of 300. Three hundred what?

Mr. STRACHAN. Well, it is \$300,000. On almost all of the memorandums that I wrote to Mr. Haldeman, I would leave off the last three zeroes, because usually the figures that we were dealing with were very, very large.

Mr. DASH. Now, you say that you then prepared a political matters memorandum for Mr. Haldeman, and you included this approved

Mr. MAGRUDER. Primarily Mr. Dean and Mr. Mitchell.

Mr. DASH. Now, did you testify before the grand jury under any immunity provision?

Mr. MAGRUDER. No, sir.

Mr. DASH. When did you most recently testify before the grand jury?

Mr. MAGRUDER. That would have been probably 2 weeks after the April 14 discussion with the prosecutors.

Mr. DASH. What understanding do you have with the prosecutors with regard to yourself at this point?

Mr. MAGRUDER. As I understand it, I will plead guilty to a 1-count felony charge of conspiracy.

Mr. DASH. And will you be a witness at the criminal trial?

Mr. MAGRUDER. Yes, sir.

Mr. DASH. I have no further questions, Mr. Chairman.

Senator ERVIN. Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

As we did on yesterday, we made an effort to rotate the questioning among members of the committee so that the sequence is not exactly the same. We intended to try that again today with the chairman's concurrence and to rearrange the sequence of things in a different way. I will now follow Mr. Dash, I will yield then in our turn to Senator Weicker and Senator Gurney, and instead of minority counsel following after majority counsel, minority counsel will conclude the questioning of this witness.

Mr. Magruder, I am not clear in my mind about who originated the idea of the clandestine intelligence operation and when that was done.

Mr. MAGRUDER. Well, Mr. Liddy was brought over to me at the committee in December and I was told that he would handle our intelligence-gathering operations, by Mr. Dean. He indicated that Mr. Mitchell had approved this. We did not discuss in detail at that meeting what these operations would be.

Senator BAKER. Did you discuss electronic eavesdropping?

Mr. MAGRUDER. No, we did not.

Senator BAKER. Did you discuss the Democratic National Committee?

Mr. MAGRUDER. No, we did not.

Senator BAKER. But the chain of events is that Mr. Dean recommended to you Mr. Liddy.

Mr. MAGRUDER. Yes, sir.

Senator BAKER. It is your understanding that Mr. Mitchell had recommended Mr. Liddy?

Mr. MAGRUDER. My understanding is they had met in November, November 24, Mr. Liddy, Mr. Dean and Mr. Mitchell and at that time it was agreed he would become our counsel and handle our intelligence operations.

Senator BAKER. What was the nature of your concept of intelligence operations at that point?

Mr. MAGRUDER. My concept?

Senator BAKER. Yes; or Mr. Dean's or Mr. Mitchell's; if you know?

Mr. MAGRUDER. I do not know what their concept was. My concept was simply one of gathering as much information through sources in the opposition's committee would have been my concept at that time.

Senator MONTTOYA. Now, Mr. Magruder, would you say that you were acquainted with most of these projects that, especially those on which you kept a little file known as Gemstone?

Mr. MAGRUDER. Senator, when you say acquainted——

Senator MONTTOYA. Acquainted or aware of the projects.

Mr. MAGRUDER. Well, specifically the Watergate break-in, yes; I was specifically aware of that project.

Senator MONTTOYA. Did you have anything in your files with respect to Ruby 1?

Mr. MAGRUDER. My recollection of, I think, Ruby 1 and Ruby 2 and Crystal were code names, I think that Mr. Liddy used for the various bugs. I am not sure if that is correct. I think that is what it was.

Senator MONTTOYA. Can you elaborate or amplify on their significance?

Mr. MAGRUDER. I did not pay any attention to the names at all. It did not interest me.

Senator MONTTOYA. Did you have anything——

Mr. MAGRUDER. But I remember the names.

Senator MONTTOYA. Did you have anything in your files with respect to these names?

Mr. MAGRUDER. Well, when the documents came in those names were in the documents, and I just cannot recall in what context they were in the documents. My recollection was that I thought that they were the positioning that would identify where that bug was, that is what I thought. I would not, I could not verify that. I think that is my recollection of what Ruby 1, Ruby 2, and Crystal meant.

Senator MONTTOYA. Do you mean to tell me you did not read the documents that went into the Gemstone file?

Mr. MAGRUDER. I did not say that, sir. I said I read the documents but the jargon, the jargon that Mr. Liddy used was not of any interest. Actually, Senator, I only read the documents once, found them to be useless and did not read them again.

Senator MONTTOYA. What about Sedan Chair No. 2?

Mr. MAGRUDER. Sedan Chair 2, to my recollection, was an individual who was in the Humphrey campaign, who had been set up before Mr. Liddy came on board, although that could be incorrect, it may have been after, and was simply as I understood it, I think a disgruntled employee who was passing information to us. I just do not know who Sedan Chair 2 was. He wrote one extensive report that I think Mr. Porter alluded to Humphrey's campaign in Philadelphia.

Senator MONTTOYA. Now, you indicated also in testimony heretofore given that you always assumed that when Mr. Dean acted that he had authority either from Mr. Haldeman or Mr. Ehrlichman, did you not?

Mr. MAGRUDER. I think, Senator, I said that his normal reporting relationship was either between Mr. Haldeman and Mr. Ehrlichman. I do not know specifically in every case whether he was acting in their behalf.

Senator MONTTOYA. But you were under the belief that because he was employed at the White House under these two gentlemen that he was acting for and in their behalf. Is that what you indicated before?

Mr. MAGRUDER. Senator, in a general context; yes, sir.

Senator MONTTOYA. What particular part did Mr. Dean have in forging the plan for the coverup?

Mr. REISNER. The total amount, when you added up the amount Mr. Porter had received, seemed to be in the range of \$40,000 to \$50,000. But that was—

Mr. THOMPSON. Is that what the committee referred to as petty cash at that time?

Mr. REISNER. I referred to it as petty cash until I had assisted Mr. Porter in the activity.

Mr. THOMPSON. And realized it was greater than you thought.

Mr. REISNER. I am sorry?

Mr. THOMPSON. And you realized that the money he had was more than you thought?

Mr. REISNER. With this exception: It was not petty cash in the sense that there were \$7,000 or \$8,000 on hand, which is certainly not petty cash. The \$40,000 to \$50,000 that I am referring to was sums that had accrued from the beginning of the time that there were receipts—July or June of 1971 until March.

Mr. THOMPSON. How much cash was in the safe?

Mr. REISNER. How much cash at that time? It seems to me it was in the neighborhood of several thousand dollars—perhaps as much as five or six.

Mr. THOMPSON. Did the receipts—do you recall any names of, or any amounts to individuals who were receiving money from Mr. Porter's safe?

Mr. REISNER. Well, I can remember that there were, in addition to Mr. Liddy—now, Mr. Liddy was—it was Mr. Porter that indicated to me that Mr. Liddy was receiving money. There was an individual who was referred to by a code name and that code name was "Sedan Chair" and that that individual was—

Mr. THOMPSON. Sedan Chair? Two words?

Mr. REISNER. Yes. I believe it was actually "Sedan Chair 2."

Mr. THOMPSON. Was there a Sedan Chair 1?

Mr. REISNER. I do not know. I do not know. Perhaps there was.

There was also an individual who worked for Mr. Porter named Roger Stone, who I believe received money. And there may have been other individuals.

But to my recollection, which is a little bit vague on this, there was not a regular disbursement, with those exceptions.

Mr. THOMPSON. Who was Sedan Chair?

Mr. REISNER. I do not know. I know that—well, I mean, I have sort of a general circumstantial understanding of who I think Sedan Chair was.

Mr. THOMPSON. Tell us about it.

Mr. REISNER. I will come as close as I can.

Mr. THOMPSON. Tell us about it.

Mr. REISNER. Subsequent to that, after I learned that there was such an individual, I think I was more alert to the name and I did see a memo in April, I believe, or perhaps May, that purported to be a report from another campaign committee. I believe it was the Humphrey committee. I do not know for a fact who Sedan Chair was. It could have been someone who just simply had his disagreement with the Humphrey committee and wished to report on some of their activities.

Mr. THOMPSON. It was someone in the Humphrey committee, from what you can tell?

Mr. REISNER. From what I can tell, I mean it purported to be.

Mr. THOMPSON. How much money was this individual receiving?

Mr. REISNER. My recollection is that it was approximately a thousand dollars a month, but I could have read that in the newspaper, frankly, it is vague.

Mr. THOMPSON. What about Mr. Liddy?

Mr. REISNER. Mr. Liddy received several disbursements that were considerably larger than that. I think they were in the nature of \$5,000 to \$8,000, I am not certain. The reason I remember them is that there were—he would return sums of money and it made the accounting somewhat bizarre. He would return \$300 after taking out \$8,000, that sort of thing. I really am not completely clear on that.

Mr. THOMPSON. Was there any indication as to the total amount Liddy had received to that time?

Mr. REISNER. No, there wasn't. I have the feeling that the total magnitude, \$40,000 to \$50,000, means that, and that is the total magnitude of what was recorded. I have no idea. Mr. Porter, I do not think, would have hidden any of what he was recording but I only saw what the receipts were there and Mr. Liddy's total figure I would think would be in the nature of half of that.

Mr. THOMPSON. Did you state when this inventory took place?

Mr. REISNER. In March, later March. I could not pin it down exactly but it was late March.

Mr. THOMPSON. Concerning the money in Mr. Porter's safe, could you tell either from anything that you saw there in the nature of receipts, from conversations with Mr. Porter, from conversations with anybody else about any other operations or individuals who were being funded, who had been paid money out of the safe of Mr. Porter?

Mr. REISNER. Anything else would be by the nature of a supposition. There is nothing else that—

Mr. THOMPSON. Do you know?

Mr. REISNER. It is hard.

Mr. THOMPSON. Or do you know or have any basis for believing that any demonstrations or counter demonstrations were funded?

Mr. REISNER. Yes, there was one occasion in April in which I overheard a conversation. The nature of my job was such that there are pieces of these things that were overheard that after subsequent events they perhaps take some meaning. I was sitting in Mr. Magruder's office at the time he received a phone call. The phone call concerned the fact that there was a desire to get some counter demonstrators or demonstrators to attend the Hoover funeral, that there was some sort of planned demonstration. It seems to me that that was an activity that Mr. Liddy was then asked to undertake and it seems to me there was some cash in that activity.

Mr. THOMPSON. Magruder asked Liddy to take care of this?

Mr. REISNER. When I say this I say this in an effort to be cooperative because I am talking about only my specific recollection. It may be that that wasn't carried out or that it was carried out differently from the way in which I heard the conversation and I think only Mr. Porter could be of assistance there. That was the nature of the initial conversation.

Senator WEICKER. Which Senator is this?

Mr. PORTER. Senator Muskie—could be used as a great front to go to California and hold tax hearings that would be a great visual event for Senator Muskie and all at the taxpayers' expense and he could get a lot of value for his campaign.

We thought that was rather interesting, to say the least, and I told Mr. Magruder about it. He asked me to just copy the memo on a, I believe it was written on plain bond—and send it to Evans and Novak.

Miss Duncan did that. Miss Duncan typed it and we sent it to Evans and Novak, and they printed it and the hearings were never held.

Senator WEICKER. All right. Were there other documents or other instances where Miss Duncan performed services relative to—

Mr. PORTER. Yes, sir, I believe it was Miss Duncan. On one occasion, Senator Muskie's speech that he was going to deliver in the Senate against the nomination of William Rehnquist to the Supreme Court was on the film, and I specifically was—it was about 20 pages and I asked Mr. Magruder what he wanted me to do with it. He said, let me check, and he did check, and he got back to me and said, Mr. Mitchell would like to see it.

So that had to be completely typed and I had to read—I read off the film into an IBM dictaphone, and I believe it was Miss Duncan who typed that. I believe it was she.

Senator WEICKER. Miss Duncan now being your secretary, is that correct?

Mr. PORTER. Yes, sir.

Senator WEICKER. At any time, did you send Miss Duncan to the White House to give Gordon Strachan copies of the photographed documents or the transcripts emanating from those documents?

Mr. PORTER. I do not remember, sir, whether I did or not; I do not remember. It is possible that I did. If I did, it would have been because Mr. Magruder would have said, take a copy of this over to Gordon Strachan.

Senator WEICKER. I do want you to think about this answer.

Mr. PORTER. I understand.

Senator WEICKER. I am not trying to mislead you, and if you care to take a minute or so, just to carefully think about it, please do so. I do not want to rush you.

Mr. PORTER. I will tell it as I remember it, and I do—let me say this. Certainly, if Miss Duncan says that that happened, then it did happen. I would not dispute anything that she might say.

On the other hand, the only reason that I would send a document over to Mr. Strachan would be at Mr. Magruder's suggestion or direction. I believe that I do remember sending—I believe there was only one copy of the Rehnquist speech put together—I think—it was so long. However, on the item that appeared that was sent to Evans and Novak, I think perhaps that may have been sent over to Mr. Strachan. I just do not remember, Senator.

Senator WEICKER. And you realized at that time that these various documents—well, let me rephrase my question.

The obtaining of these documents, did you consider them to have been obtained legally or illegally?

Mr. PORTER. I remember asking Mr. Rietz. The first question I asked him, I said, "Is this any part of the U.S. mail?" And he said, "No."

I knew that intercepting the U.S. mail would be a violation of the law.

I put the photographing of a document in the same category as xeroxing a document. If you are taking a picture of it one way, you are taking a picture of it another way. So I did not think it was illegal. I thought it was very surreptitious, but I did not think it was illegal.

Senator WEICKER. You thought it was surreptitious?

Mr. PORTER. Yes, sir.

Senator WEICKER. But you did not think it was illegal?

Mr. PORTER. No, sir.

Senator WEICKER. Why, then, did you indicate to your secretary that these were not matters to be discussed?

Mr. PORTER. I think that is, in my opinion, that would be self-evident, Senator Weicker, that you would not go around discussing things like that, the same as you would not go around discussing any kind of information gathering that you might be doing.

Senator WEICKER. Did you indicate to her that if she discussed it, she would be fired?

Mr. PORTER. I do not believe I ever made that statement to her, no, sir.

Senator WEICKER. Again, let me just ask the question, am I correct in paraphrasing your answer to me that there might have been an instance where you sent material to the White House to Gordon Strachan or am I correct in saying that there were those instances and if so, how many? That is my question.

Mr. PORTER. I cannot remember the exact number of instances that I sent things to Mr. Strachan. Mr. Strachan would get copies addressed to Mr. Haldeman of many things that I did, Senator, in relationship to my primary function at the campaign or the surrogate operation, schedules, and plans—

Senator WEICKER. I understand, but—

Mr. PORTER. I do not remember—excuse me.

Senator WEICKER. Excuse me.

Mr. PORTER. I just do not remember specific instances where Mr. Strachan was sent an item here or an item there. As I say, if Miss Duncan says that she did, then I would believe that. But I personally do not remember that specific instance.

Senator WEICKER. You do not remember, then, sending Miss Duncan to the White House to give Gordon Strachan copies of these photographed documents?

Mr. PORTER. I would say that, if it is an answer, I kind of remember it, but not enough to sit and testify that I did it. All right? I mean, I sent Mr. Strachan documents and, on occasion, Miss Duncan would hand carry them for one reason or another—either because the messenger was not going to come back until 4 o'clock and it was noon, or Mr. Magruder wanted to get something over there right away, or something like that, and the secretaries would hand carry them.

Senator WEICKER. I have no further questions, Mr. Chairman.

Senator ERVIN. Senator Montoya.

9. Dean told the President on March 21, 1973 that Haldeman was assuming that the Committee to Re-Elect the President had an intelligence gathering operation conducted by Liddy that was proper. Dean told the President there was nothing illegal about "Sedan Chair".

	Page
9a] Transcript, March 21, 1973, 10:12-11:55 a.m. pp. 178-179	78
9b] Transcript, March 21, 1973, 10:12-11:55 a.m. p. 180	80

9a
either fish or cut bait. This is absurd to have these guys over there and not using them. If you are not going to use them, I may use them." Things of this nature.

P When was this?

D This was apparently in February of '72.

P Did Colson know what they were talking about?

D I can only assume, because of his close relationship with Hunt, that he had a damn good idea what they were talking about, a damn good idea. He would probably deny it today and probably get away with denying it. But I still -- unless Hunt blows on him. --

P But then Hunt isn't enough. It takes two' doesn't it?

D Probably. Probably. But Liddy was there also and if Liddy were to blow --

Then you have a problem -- I was saying as to the criminal liability in the White House.

D I will go back over that, and take out any of the soft spots.

P Colson, you think was the person who pushed?

D I think he helped to get the thing off the dime. Now something else occurred though --

P Did Colson -- had he talked to anybody here?

D No. I think this was --

P Did he talk with Haldeman?

D No, I don't think so. But here is the next thing that comes in the chain. I think Bob was assuming, that they had some-

thing that was proper over there, some intelligence gathering operation that Liddy was operating. And through Strachan, who was his tickler, he started pushing them to get some information and they -- Magruder -- took that as a signal to probably go to Mitchell and to say, "They are pushing us like crazy for this from the White House. And so Mitchell probably puffed on his pipe and said, "Go ahead," and never really reflected on what it was all about. So they had some plan that obviously had, I gather, different targets they were going to go after. They were going to infiltrate, and bug, and do all this sort of thing to a lot of these targets. This is knowledge I have after the fact. Apparently after they had initially broken in and bugged the DNC they were getting information. The information was coming over here to Strachan and some of it was given to Haldeman, there is no doubt about it.

P Did he know where it was coming from?

D I don't really know if he would.

P Not necessarily?

D Not necessarily. Strachan knew it. There is no doubt about it, and whether Strachan -- I have never come to press these people on these points because it hurts them to give up that next inch, so I had to piece things together. Strachan was aware of receiving information, reporting to

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Bob. At one point Bob even gave instructions to change their capabilities from Muskie to McGovern, and passed this back through Strachan to Magruder and apparently to Liddy. And Liddy was starting to make arrangements to go in and bug the McGovern operation.

P They had never bugged Muskie, though, did they?

D No, they hadn't, but they had infiltrated it by a secretary.

P By a secretary?

D By a secretary and a chauffeur. There is nothing illegal about that. So the information was coming over here and then I, finally, after --. The next point in time that I became aware of anything was on June 17th when I got the word that there had been this break in at the DNC and somebody from our Committee had been caught in the DNC. And I said, "Oh, (expletive deleted)." You know, eventually putting the pieces together --

P You knew what it was.

D I knew who it was. So I called Liddy on Monday morning and said, "First, Gordon, I want to know whether anybody in the White House was involved in this." And he said, "No, they weren't." I said, "Well I want to know how in (adjective deleted) name this happened." He said, "Well, I was pushed without mercy by Magruder to get in there and to get more information. That the information was not satisfactory.

10. Political Matters Memo #18 was prepared by Strachan and submitted to Haldeman on March 31, 1972. On April 4, 1972 Strachan prepared a talking paper including the mention of the "sophisticated intelligence gathering operation" for use by Haldeman in a meeting he was having with Mitchell on that day. The paper was returned to Strachan and filed with Memo #18 after Haldeman met with Mitchell. Strachan testified the subject of intelligence gathering was never raised again by Haldeman. Strachan is certain none of the Political Matters Memo had the "P" with a check mark through the "P" which was the procedure used for memos discussed in that form with the President.

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10a Strachan 6 SSC, 2452, 2454, 2488..... 82

that would strike me as far more sensitive a matter to send through the normal messenger channels than some file which other witnesses have indicated was not patently illegal on its face.

Mr. DASH. In other words, what you are saying is that you never did see the Gemstone file, Mr. Magruder never invited you over to see it, and that prior to March 30, you had no knowledge of any so-called Liddy intelligence plan?

Mr. STRACHAN. That is correct.

Mr. DASH. Now, did that change, at least after March 30?

If it did, could you tell us how it changed?

Mr. STRACHAN. Yes; I was aware that Mr. Magruder would be going down to Key Biscayne to review several campaign decisions that had accumulated during John Mitchell's working on the ITT problem. He called me up in an apparently fairly brief telephone conversation and reviewed the 30 or so pending campaign decisions. I took notes on that telephone conversation and prepared shortly thereafter a political matters memorandum for Mr. Haldeman, summarizing that telephone conversation as well as other information.

Mr. DASH. And what did that include? I mean did it include a Liddy intelligence plan?

Mr. STRACHAN. Yes; Mr. Magruder told me that a sophisticated political intelligence gathering system had been approved and I reported that to Mr. Haldeman.

Mr. DASH. Were you aware that that was one of the items for decision that went down to Key Biscayne with Mr. Magruder?

Mr. STRACHAN. No; I was not.

Mr. DASH. So that it was after he came back that he reported that to you?

Mr. STRACHAN. That is correct.

Mr. DASH. Can you recall approximately when he made that report to you?

Mr. STRACHAN. Well, it was shortly thereafter, I would guess either Friday, March 31, maybe Saturday. My secretary recalls having typed the memorandum on Friday.

Mr. DASH. And it is clear in your mind that Mr. Magruder reported that Mr. Mitchell had in fact approved a sophisticated intelligence plan?

Mr. STRACHAN. Well, I concluded that Mr. Mitchell had approved it. I believe that when Mr. Magruder was going through the decisions and the way I would usually report it to Mr. Haldeman would be that Mr. Magruder reports that Mr. Mitchell has approved the following matters, and I would put a colon, and then I would list the items.

Mr. DASH. But did you do it with regard to this plan?

Mr. STRACHAN. Yes; that was one of the 30 items that was listed.

Mr. DASH. I think in your statement you referred to a sophisticated intelligence system with a budget of 300. Three hundred what?

Mr. STRACHAN. Well, it is \$300,000. On almost all of the memorandums that I wrote to Mr. Haldeman, I would leave off the last three zeroes, because usually the figures that we were dealing with were very, very large.

Mr. DASH. Now, you say that you then prepared a political matters memorandum for Mr. Haldeman, and you included this approved

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Mr. STRACHAN. Well, there was a button on the call director phone that I had which would buzz when I was to pick that line up, and I pushed down the button and began listening to the conversation usually at that time which was already in progress.

Mr. DASH. All right. In this particular case now with a call, I take it, you are testifying to Mr. Mitchell, could you tell us, having picked up the line, what you heard?

Mr. STRACHAN. Well, Mr. Mitchell indicated that he was either going to return or had returned from Florida, and Mr. Haldeman jokingly said, "Well, that is clearly a mistake. You ought to stay down there and vacation some more," and Mr. Mitchell indicated that "Well, we had better get together and talk about some matters." Haldeman asked him if 3 o'clock that day would be convenient.

Mr. DASH. And that day was when?

Mr. STRACHAN. April 4.

Mr. DASH. 1972?

Mr. STRACHAN. 1972.

Mr. DASH. And was there, in fact, a meeting on April 4, 1972, between Mr. Haldeman and Mr. Mitchell?

Mr. STRACHAN. Well, I did not attend the meeting so I could not testify that there was in fact but I prepared a talking paper for the meeting and we would prepare a folder which would include the talking paper, and the talking paper went into his office and came back out afterwards.

Mr. DASH. All right.

Now, in this talking paper, did you include the item of the sophisticated intelligence plan with a budget of \$300,000?

Mr. STRACHAN. Yes. In most talking papers I would frequently pose the question is the intelligence system adequate? Is the proposal on track, just to get the conversation going on the subject, and in this particular one I did include that paragraph.

Mr. DASH. Now, prior to that meeting and when you were preparing that talking paper, was there any other political intelligence plan operative or being considered to your knowledge?

Mr. STRACHAN. No; not to my knowledge.

Mr. DASH. Did you receive back that talking paper after you had given it to Mr. Haldeman?

Mr. STRACHAN. Yes. I did.

Mr. DASH. And to your knowledge, was there any indication as to whether all the items on the talking paper had been discussed?

Mr. STRACHAN. Well, usually if a matter had not been discussed he would indicate that it should be raised again. In this case it was not raised again, indicating that he would have covered the subject.

Mr. DASH. What did you do with that talking paper then when you received it back?

Mr. STRACHAN. I put it back in the file with the political matters memo 18 files.

Mr. DASH. And there was no indication from Mr. Haldeman that he had either not discussed it or it needed any further action on your part?

Mr. STRACHAN. That is correct.

Mr. DASH. Now, did there come a time after that meeting between Mr. Mitchell and Mr. Haldeman, and also in the same month of April,

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Senator INOUE. Was any distinction made between personal and private papers and public papers, or were they all in one package, sir?

Mr. STRACHAN. Well, that question of law has never been settled. Most Presidents have taken the view that any documents prepared in their public capacity belong to them. Former President Johnson left with something like 20 moving vans full of documents and memorabilia, with no apparent distinction between personal papers that he had drafted and papers that had been prepared by other members of the Government for him.

Senator INOUE. Were the tapes that we have been discussing today a part of the estate of Richard M. Nixon? Part of the estate plan?

Mr. STRACHAN. Well, usually, the description of the assets which would be transferred would be extraordinarily broad. Terms such as "materials" would be used to include everything—papers, memorabilia, State gifts, tapes, photographs, almost anything related to the Presidency.

Senator INOUE. Were you aware that the tapes that have been under discussion the last few days were considered as part of the estate plan of the President?

Mr. STRACHAN. No, I did not know of the existence of those tapes until Mr. Butterfield's testimony.

Senator INOUE. Now, you have said that you prepared several political memos which were passed on to Mr. Haldeman. Are you aware if these memos were ever seen by the President?

Mr. STRACHAN. No, and I would doubt that they were, because memorandums which I drafted for Mr. Haldeman, that he reviewed with the President, would usually concern polling matters, and he would put a "P" up in the upper right-hand corner, indicating that he would want to take it in and cover it with the President, then it would come back to me with a checkmark through the "P," indicating that he had covered it with the President. And I do not remember, and I am certain that I would, that any of my political matters memos were covered with the President in that form.

Senator INOUE. My final question before we recess for a few moments. Mr. John Dean has stated that he recalled visiting you in your office in the presence of Mr. Richard Moore and recalling your saying that you would, if necessary, perjure yourself to prevent involving Mr. Haldeman.

Just for the record, is that still the frame of your mind?

Mr. STRACHAN. Well, it is certainly not the frame of my mind now, and it wasn't at the time. The particular meeting or conversation that Mr. Dean, I believe, is referring to followed a series of meetings to decide how to cope with the Segretti matter. Mr. Dean testified that there was a Sunday meeting in the Roosevelt room, and he listed the attendees, trying to deal with the imminent story on Mr. Segretti. Mr. Dean did not mention my name, yet I was at that meeting.

There were a series of meetings after that, and I believe one of them was the meeting in question with Mr. Moore. We were working on statements that could be put out to the press by the White House, such as the one that Mr. Chapin eventually released, and I indicated at that time that if the statement was to be released in my name, it could indicate that I had approved Don Segretti instead of Mr. Haldeman.

11. Haldeman has testified that he and Mitchell did not discuss intelligence gathering activities with the President on April 4, 1972, and that he and Mitchell only reviewed with the President matters relating to the ITT-Kleindienst hearings and arguments of regional campaign responsibilities. Haldeman's notes of the meeting show no political intelligence gathering operations were discussed. The transcript of April 4, 1972, meeting between the President, Haldeman, and John Mitchell confirms that there was no discussion of campaign intelligence gathering activities.

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<u>11a</u> Haldeman 7 SSC, 2881	86
<u>11b</u> Transcript, April 4, 1972, 4:13-4:50 p.m., p. 1-31 (submitted to the Committee on the Judiciary on June 5, 1974).....	87

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tion to either of us that he had been instructed to destroy any materials or make sure files were clean.

I think the effort to bring in my April 4 meeting with John Mitchell as in some way significant with regard to intelligence is a little far-fetched. By his testimony, Strachan doesn't know what was discussed at that meeting. All he says is that, in routine fashion, he put an item on the talking paper regarding the adequacy of intelligence. As a matter of fact, the meeting with Mr. Mitchell that day was in connection with a meeting of Mitchell and me with the President. My notes taken at the meeting with the President indicate the discussion covered the ITT-Kleindienst hearings and a review of Mitchell's plans for assigning regional campaign responsibilities to specific individuals. They indicate no discussion of intelligence.

DEAN INVESTIGATION

John Dean, in his Camp David report—which is now exhibit 34-43* before this committee—says that when he arrived in Washington on Sunday afternoon, June 18, he realized that the President would have to know everything that he could find out. He realized at that point that he would be asked to assemble all of the facts so that the White House could be fully informed as to what had transpired and how it would affect the President, but having been on an airplane for approximately 25 hours he did nothing further that evening.

The next morning, after reading all of the news accounts of the Watergate incident, he spoke with John Ehrlichman, who instructed him to get the facts together and report to him. He then called the Attorney General to get what facts he knew. He called Gordon Liddy and met with him. Dean asked Liddy if anyone at the White House was involved and he told him no.

During the days and weeks that followed, Dean discussed the incident with everyone who he thought might have any knowledge or involvement.

The source of these facts is John Dean's report, or the start of it, which he wrote at Camp David in March of this year.

There is absolutely no question in my mind, or, I'm sure, in the minds of anyone at the White House, or at the Justice Department, that John Dean was in fact conducting an investigation for the White House regarding the Watergate as it might involve the White House. It is inconceivable to me that there could be any doubt in Dean's mind.

Dean moved in immediately after the incident as sort of the Watergate project officer in the White House. This was in keeping with our usual procedure; the responsibility was his and he had the authority to proceed. Dean kept Ehrlichman and me posted from time to time on developments and, through us, the President. He apparently did not keep us fully posted and it now appears he did not keep us accurately posted.

The President, Ehrlichman and I were very much involved in many other vital matters through this entire period and we made no attempt to get into the details of, or in any way take over, the Watergate case.

*See Book 3, p. 1263.

June 5, 1974

Honorable John M. Dear
Special Counsel to the
House Judiciary Committee
Congressional Annex
New Jersey & C Street, S.E.
Washington, D.C.

Dear Mr. Dear:

This is in response to your request for the tape recording of the conversation between the President, Mr. John Mitchell and H. R. Haldeman on April 4, 1972, from 4:13 - 4:50 P.M., with respect to which there was sworn testimony by Mr. H. R. Haldeman that the subject of ITT was discussed. Attached is a transcript of that meeting.

If it is desired to check the accuracy of the transcript, I am authorized to advise you that the President would permit the Chairman, Mr. Rodino, and the Ranking Minority Member, Mr. Hutchinson, to listen to the tape at the White House.

Sincerely,

James D. St. Clair
Special Counsel to the President

The President/Attorney General Mitchell
and H. R. Haldeman
Oval Office
April 4, 1972 - 4:13 - 4:50 PM
(Expletives Deleted)

P Well John, I hope you had some time off -- that they didn't
bother you to death with ITT and all that

M No. It was simply wonderful.

P Good (unintelligible).

M We always enjoy it, Mr. President. Oh, Bebe turned that
thing up according to your formula and

H (Laughter).

M I tell you, it was just great.

P I told these people around here, I said (unintelligible) call
Mitchell, I said don't you Bob, and.
Of course, I suppose they had to (unintelligible) one or two.

M Well some of them did.

H We didn't bother you too much?

M No, not you fellows.

P I said in the campaign -- I said to hell with the damn
campaign. Did you do any golfing? No?

M Hell, I didn't even care to.

P Did you fish?

M We fished, and we went out in the boat with Bebe a couple of
times and had dinner with him two or three times.

-2-

P I'd like a little consomme. Want some consomme?

M I'd love some. So it was just absolutely great. We had some of the people down from the Committee where we could spend a couple of days, you know, with quiet and so

P Yeah (unintelligible) sort of busy these days. Try and get the weather, damn it, if any of you know any prayers, say them (unintelligible) weather. Let's get that weather cleared up. The bastards have never been bombed like they're going to be bombed this time, but you've got to have weather.

M Is the weather still bad?

P Huh! It isn't bad. The Air Force isn't worth a I mean, they won't fly. Oh, they fly, but they won't -- you see our Air Force is not . . .

H It's the strangest thing -- in World War II they flew those bombing runs all the time and they couldn't see a thing.

P I know.

M But they were doing a different type of bombing then.

P Strategic bombing and all that -- nevertheless it's a miserable business.

M Are the Navy pilots as bad?

-3-

P Oh they're better, but they're all under this one command. It's all screwed up. We just aren't going to talk about it. The weather will clear up. It's bound to. When they do, they'll hit something -- and, they're a lot of brave guys -- you've got to say. After all that POW (unintelligible) that poor who got shot down. They're over there starving on that damned rice. It's all right, we'll give 'em hell. Well the ah, what are your reflections on the present thing. Why don't we start with what I told the staff to get the hell off of the ITT and then get on to politics which is more interesting, not that that isn't --

M But that's politics -- pure and simple politics, but hopefully we'll get this thing.

P Well, I don't know if we'll ever get out of it -- I mean -- I think what we have to face is that it will be investigated by (unintelligible) election as you get closer to the election of course it's extremely, I think that -- I think you might adopt the practice -- I think you might consider adopting the practice that after the Democratic Convention the Republicans will boycott all investigating committees on the grounds that they are politically motivated. How would that be?

-4-

M I would think I would go beyond investigative committees.

I'd go to some of the others where you have a facade

P Harassing.

M Of substance, but

H (Unintelligible). It's a good idea.

P Yeah -- we're going to boycott anything that we think is politically motivated.

H These people are disgracing (unintelligible).

P And ah, Republicans just walk off and say it's just politically motivated. Well, at least ITT got 'em confused.

M I would say it's quite confusing. Some of the more enlightened newspaper people are beginning to write to the effect that the Democrats got to come up with something more than they've come up with or the monkey's going to be on their back.

H Manolo, who do you think (unintelligible).

MS I don't think so, sir.

M Not much Manolo.

MS What they do is (unintelligible).

M You happen to be right, Manolo. I was just telling --

(Material unrelated to Presidential actions deleted)

-5-

M You know this little girl -- this Lichtman -- the secretary?
You know where she had her press conference don't you -- did
you notice that? Down in the law office of the Democrat
Chairman for the District --

P She's a Democrat?

M Yeah, but the press conference was held in the law office of
this (unintelligible) District, Democrat Chairman, and yet
there wasn't anything in the newspapers about it or why it
just so happened.

HorP (Unintelligible).

M Most of the 'shakers' are, that's for sure.

P What is your view about the convention -- about all the scares
and cries I hear about the 250,000 naked kids that are going
to be coming?

M Well, Bob and I have just gone over this and I've had a meeting
this morning with

P Kleindienst told us about it.

-6-

M And so forth, ah, it seems to me there are three factors -- number one was screaming kids -- if you call them kids; number two -- the ITT Sheraton business with the television on the hotel all through the Convention; and thirdly, and equally, if not more important, is the fact that the site selection committee and the people that went out there to look at that thing did a God damned poor job. Its come to the point where it's going to cost between 2.4 and 2.5 million to put that thing together. In addition to that, there's

H That's if we just get the convention hall apparently?

M No, no, this is the whole thing, this is the whole thing.

H I see, all the hotels and stuff involved.

M Yeah everything; in addition to that there has to be nine hundred odd thousand dollars of insulation in that arena out there, and in addition to that there's a

P Who, (unintelligible) this, Wilson (unintelligible).

M No, I think a lot of our people closer to us than that were at fault in not recognizing the limitations of these facilities.

P All right.

M In addition to that you have your building trades labor contract coming up on June 1, out there for negotiations, and they can put the pressure on your pay board or the rest of it. So, in view of that we have thought of the potential of changing the site. We can get out of there --

-7-

- P What ground would you use for changing it?
- M The cost and the uncertainty of the availability of the facilities.
- H There's a real question as to whether they can do the construction on --
- M That's correct, and the arena out there is owned by two Canadians, and they're just acting tougher than hell.
- P All Canadians are tough.
- M And, there's no contract with them that covers some of these things; -- ah, so that you're not walking away from the City of San Diego, you're walking away
- H You can make a very good case.
- P How about San Diegians -- how do they feel?
- M I don't know, frankly, I believe it would be mixed emotions.
- H It's mixed, but with all the talk of the demonstrators
- P Lot of people don't want them there
- H I think a lot of San Diegians would be very happy to have them go away.
- M I would think that that would be the case.
- (Overlapping conversation)
- H Hotels anyway --

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P (Unintelligible) you build the fact that the arena is in trouble, in other words, you've got to find the cause. This subject came up before, you know, you raised it, Bob, and said, well, our people are so stupid on public relations that I'm sure the way it would come out is we went because we didn't want to stay at the Sheraton where somebody I understand agreed I was to stay.

H No.

P I'm not even going to stay any place in San Diego -- I'm staying in San Clemente, but be that as it may that was apparently some story that they had. Well anyway, whatever it was, the question is whether or not at this point we could start the talk. It's awful hot incidentally, terribly hot.

H I can see that

M Well, we've started this

P Put it on the basis that the arena can't be finished. Can we do that?

M Yes, as a matter of fact, I was going to say we're starting this, programming this, by sending people out to continue, and I say continue the negotiations with these Canadians because they don't want to give us a place for lead time in order to get in there to do the improvements, etc., etc.

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H Then we could start the cost thing and then

(Overlapping conversation).

P I'd just say that the arena would not be finished.

M Well, the cost factor goes in with the negotiations because if you don't get into the arena to do the reconstruction by a certain date your cost factors multiply and multiply and multiply -- so you just (unintelligible) the same factor. In the meantime, I talked to Bebe this morning and a Miami Beach of course is the logical place.

P Sure.

H (Unintelligible).

P Well, if it's all set up -- safe -- television -- that's the major consideration. At least it's all there. Go to the stupid damned place again, and I got a place to stay this time I wouldn't have to stay in a hotel.

M So Bebe has got this fellow Myers.

P Hank Myers.

M Hank Myers, who has the contacts and so forth, quietly canvassing to see if the arena and the hotel rooms will be available.

H This time of year?

M Oh hell, they run a lot of conventions.

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P They run a lot of conventions but they'll clear them out by that time. It isn't really, I've been there in June and August -- we all have -- and they do run conventions, but generally speaking, it's still more open in the summer and the rates are lower.

M Of course

H It's still ridiculous though.

M So, if the only negative factors that I see in the change

P Is the admission of guilt in ITT, right?

M Well, I think that that will go by the boards.

P Maybe that's better than just having the damned story rehashed again.

M I would rather have the -- if they can sell it as an admission of guilt now than I would have the television cameras on the Sheraton Hotel all through the Convention.

P That's right. That's right.

M I don't know

P My theory is - It's the old story you know that a good poker player - cut your losses -- get out of the bad box and get out of it fast.

M I don't know how our friend the Governor would take this. He might be damned glad to get the problems out of the way. I don't know, but we would do --

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P Can't we -- could we have a situation where we have a break with the Canadians. You see what I mean? Create a conflict with them.

M That's what we're

P And then go out and announce it, but it's got -- if for once we could do the PR right -- if for once -- just one single solitary time -- and keep it out of Bob Wilson's hands -- and do it right -- but the problem is that the convention (unintelligible) that is the arena won't be ready, the cost is too great, or . . .

M That's the way we would program it.

P Think it would work?

H Sure. I think it would. You're bound to get some bumps on the other side? So what? You got a base a story -- just stick with it -- couldn't get the arena done -- made a mistake in surveying it. It's all fallen apart.

P You've got to establish that immediately though. This is April, and the Convention is only five months away, and so everybody is going, as you know, now that's going to be ready --

M You see these negotiations are going on and what we were proposing to do is to send a big architect and a builder or somebody else up to have a confrontation with the Canadians in Vancouver.

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P Well let's do it.

M Well, we want to make sure we can go to Florida before we break this pick.

H I'd just soon not have a convention, but we can't get away with it.

M Have an absentee ballot -- that's what I'd prefer.

H The Ripon Society is suing us for improper selection of delegates or something.

P (Unintelligible).

H We have something where you state that (unintelligible) to the President gets eight additional delegates or something and the Ripon people have gone to court and some judge has upheld them on the first round.

P Is that right? Well that's been done -- been done from the beginning -- I don't know whether it means anything.

H I don't think it does. They don't seem to worry about that anymore.

M The fact of the matter is that there are a few rules that a political party has control of it's Convention and in the past they have ignored even the state laws that require people to be pledged for so many ballots and so forth. They've just ignored them.

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P Let me ask you this. Do you think the possibilities of major demonstrations are less in Florida? It doesn't make a hell of a lot of difference anyway. I'd rather have a demonstration in Florida than I would in California anyway. California is a state we have to go for for other reasons.

H Well, I think they are infinitely less.

M Infinitely less.

H You've got much better physical (unintelligible).

M And in addition to that you have all the Democrats in control in Florida from the Governor on down -- where in California you have all the Republicans in control.

H (Unintelligible) have demonstrations (unintelligible).

P One story John, whenever you're asked about a (unintelligible). You know, I'm the only one in the whole outfit that didn't want to go to California. I was against it all the time.

M You wanted to go to Chicago. I didn't want you to.

P I did. That's right, but I (unintelligible).

M No question about it.

P How about Chicago now?

M Daley wouldn't let you in there, I bet.

P Oh

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H Can't start from scratch from anyway now, I don't think.

You've got

M Be very very difficult.

H It would.

M And we have a month between the Conventions -- more than
a month in which

H Clean things up

M To change things enough to make it look like -- assuming that
(unintelligible)

P (Unintelligible) platform in.

M The facilities for crowd control are so much better in Miami
Beach there.

H And of course the cost is

M And we save money LEAA money, we don't have to

H Save police money.

P The other point is the Democrats really fouled up, and the
police and the rest will feel that they have a responsibility to be
a little bit more restrained when we're there. Well, I hope you
can do it. My idea is -- I'd wait. Obviously we have to get ready --
when it's ready -- I'd say in about 30 days from now.

M I think we could move in on it before then

H Faster

M Because we're at the point where

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P (Unintelligible) no way you could do it though without being charged because of ITT

M Well Herman came out with a statement today which shows that ITT's contribution is down to \$25,000. I just think that the cost of it, the labor problem, the possibility that you'll never get that place in shape

P Yeah

M Ah, added on top --

P Also, we don't -- there's very little that we could do to screw up Florida as a state that we might win. California is a toss up anyway you figure it. It's a to carry and there's a nasty incident that could hurt us.

M Yep.

P That's the point. On the other hand, I don't think Reagan's attitude is supportive. He wants to carry the state. On the other hand, you got to figure whether or not -- these clowns that want to go there say -- oh it would help so much -- and all that business.

H (Unintelligible).

M Well -- you've a double edged sword there -- if everything went off nice and peaceful and you had all those 10,000 college kids we were going to have out there marching with their banners and everything was beautiful -- that'd be great.

P Yeah.

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M But if you have one of these confrontations with a Republican Governor and a Republican Mayor and Pete Pitchess is sending in his storm-troopers -- why

P Yep.

M Well that's where the police are going to come from, you know they don't have enough in San Diego to handle it.

P (Unintelligible) send Pete Pitchess down - Sheriff's posse. Those old farts riding their horses. Well, I like it, but I would say that if you just start getting the word out awful fast about the (unintelligible) problem you are having with the Canadians. Is that being done, I haven't seen anything?

M Well, it's all local out there. It's known locally.

P The main point is to get it out nationally. Well.

H Local too.

P Who would say that? -- the Mayor would say it or the Convention Committee -- that we regret that we cannot handle it -- that we cannot have the hall ready.

M Well this is the Republican Convention and they wouldn't be saying it because they would, of course, have to bring that site selection committee back and they'd have to put out another call and things like that; so it would be the Republican National Committee that's the party of interest.

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P Ok. -- Well leaving that subject -- what else is -- I guess today is Wisconsin isn't it?

M It certainly is -- ought to be an interesting go -- ah -- I told those fellows over there tonight with Dale and -- Dole and so forth -- to get out two thoughts in connection with this primary in Wisconsin. Number one, that there was a clear indication because of the proliferation that the Democrats did not have a viable national candidate when you look at who won in New Hampshire and who won in Florida and who won here and the next place and secondly, if there was any winner at all it was Teddy Kennedy. Now Teddy's been getting a free ride, but not being drawn into this, and if you have Dole, Dale and whoever else bring this up that --

P Why wouldn't you say that Teddy is going to be the nominee.

M Yeah, Teddy's getting

P Rather than he's a winner -- I'd simply say that McGovern's a stomping horse for Kennedy and Lucey is the Kennedy man and it looks like Kennedy is going to be the winner of the nomination. Looks like Kennedy. None of the others have got the horses to win it. Smoke him out a little.

M That's right and then, what I would hope would come out of it -- is what the Republican National Chairman and so forth are saying

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M is that the reporters will be going to these other candidates and say "what do you think about what they are saying about Kennedy" and let's get them posturing themselves against Kennedy so that he doesn't get this free ride.

P It's clear, it's clear that this is a -- Mel Laird is saying that the reason Muskie has been really poleaxed there among other is that Lucey and the Kennedy Democrats have ganged up on him. They got behind McGovern, not for the purposes of supporting McGovern, but to kick the hell out of

M Muskie

P Muskie, and also, he said they did it for another reason: they didn't figure Hubert had a chance before Florida and didn't have time to change their course until then or they'd all been for Hubert, but then anybody but Kennedy. Their purpose was to stop Muskie. But they've done that -- now Hubert, of course, has come in.

H They can't stop Hubert! (Laughter)

P They can't stop him if he wins this time.

P I think he will. I think he'd be first -- McGovern second -- and if Wallace is third, I think Muskie then would be fourth, but that's just a guess.

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M I don't know how the

P Maybe Muskie will be -- Muskie will be second.

M Well, I doubt that very much.

P He's up there though. He had a big telethon push which I
(unintelligible).

M I don't think Muskie is going to have that drawing power up
there.

P You know the thing that occurred to me is that -- it seems to
me that as you look around the states -- the big states --
New York is one that I don't think you could (unintelligible) --
you really have to be personally in charge out there, and
anybody else I let in there, you know what I mean, because
you've to play the game and Rockefeller's got to carry it for
us hasn't he? Have to get off his ass, but you've got to play
the game with those conservatives, right? And so there the
problem

H Incidentally, did you see Bill Buckley's -- you see that letter
he sent out?

P No. What's he done now?

H He sent out a letter to the -- I don't know whether it's a
circulation building letter or something to the publication people
or whatever it is - but anyway, the whole pitch is -- "I've been
asked about this coming election or something, and I will say
proudly I will vote for Richard Nixon for President. I consider

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H any one of the Democratic possibilities would be a disaster
for this country." He said that "Nixon will be a problem too

M or P (Unintelligible)

H but that he has the job" -- no, he insists that "he has the job
now of doing just what the conservatives want of pulling together a
sufficiently broad coalition in order to be elected to govern." He
said "I would not vote for Nixon as editor of a conservative
journal."

P That's very good.

H And he said "I don't feel that we should abandon our principles
but when we get to the election we must vote (unintelligible).

P Then he sort of sticks it to Ashbrook?

M Well, Bill's written

H He said he was going to do that

M A couple of column's you know that go in this

P How does he, well how does he deal with Ashbrook. I mean
does he want him to get a good vote anyway?

H Yeah, because that's forcing you

M That's the signal

H To take a conservative position.

P I mean I watched Ashbrook closely

H You watch Ashbrook closely and get your guidance from
(unintelligible)

-21-

P What I was going to say is -- in Pennsylvania, who do we have there that you would say -- you also will handle New Jersey won't you? I don't think (unintelligible) or were you using Sears or others

M Yeah, Sears.

P What about the list of the big states? We got New York and New Jersey. What would you say about Pennsylvania? (Unintelligible). Or do you just divide the state up?

M Oh, do you mean who do we have in Pennsylvania?

P The boss, I mean it's a (unintelligible). Who would you consider to be the top man?

M That's really divided into regions but Arlen Specter is -- well

P Specter is our general

M Well he's our campaign director. Scott and Schweiker are the co-chairmen, and Arlen --

P Specter is the statewide chairman?

M Yes.

P Good.

M Well he's really going to work.

P Well he's good.

M And a

P And he wants to be governor doesn't he?

M That's correct.

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P Whether he wants to be (unintelligible), he's good don't you think with the Jews and with the Blacks and (unintelligible)? Also he's with us.

M Yes, and also he's -- we're deciding whether Rizzo's campaign manager should go to work for Arlen Specter now or wait and a

P How's his relationship with the Pittsburgh crowd, all right?

M They're good, because we've got other lines

P But Specter -- that's the guy -- in other words you wouldn't be in direct -- you wouldn't need anybody here to watch (unintelligible)?

M We're going to have to have people to do that, but what I've done

P (Unintelligible) you ought to handle that

M Well let me.

P On a real tough job, I would not let them out of your hands. I don't know whether you can do them all but

M No, I've already decided that in California, Illinois, Ohio, Pennsylvania, New York and New Jersey, that I am going to have a direct line through to the people. The other states we will have these surrogates

P Surrogates.

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M Regional people. Now, what I want is what we've talked about before, it's -- well, use the example of California: If we can get Cap Weinberger, if he's not so far "Hatched" that he can't do it, Cap could be a state desk man or auditor, or whatever you want to call it, somebody with the expertise of politics in California -- can go in and see what's going on up in the Valley under Monagan or what Packard is doing and his people and San Francisco, or what they're doing here there and the next place. I expect to have somebody like that for each of these big states. But I think

P I'm afraid he is "Hatched," but a

M Is he?

P (Unintelligible)

M Cap is a pretty bright able guy and he's been immersed in politics out there as state chairman

P Wonder if we should pull him out of the Budget?

M He gets along with everybody.

H Well, he doesn't want to stay in the Budget.

P I know he doesn't want to stay there. Can we pull him out and put him in an agency. He might be just as good a man as you could find around California.

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M Can he take a leave?

H Just resign.

P Let Carlucci or somebody else be Budget Director if he resigns, and

H After you get a Budget Director.

P I'd have him as full time. George could find somebody

H You've George on top of it.

P George Shultz can run the Budget, (unintelligible). I really think the thing for Cap -- so important that you want him (unintelligible). Illinois?

M Well, we've got, of course, Tom Houser is a good operator and I haven't got anybody yet.

P Pretty good, yeah

M Tom Houser.

P He's Percy's man, you know.

M No.

P No, I meant he was.

M He was.

P I mean his

M He broke with Percy you know when Percy went back on his commitment to vote for you -- or to me to vote for you at the Convention.

-25-

P Well he helps us in the area we needed him (unintelligible)
and so forth, and Texas?

M And we have

P How does Texas stand?

M We have Al -- we have John Connally.

P (Unintelligible).

M We have Al Topper (phonetically) downstate.

P Oh, good.

M Who is, you know

P (Unintelligible).

M And so -- plus a lot of good regional people -- even a top flight
guy in the city of Chicago which is a real good politician. In
Texas, I've been talking to John Connally about it.

P Have you? Good.

M John's feeling is that by the time they get to the Democratic
Convention he is not even sure that Bentsen or the Lt. Governor

P Barnes

M Ben Barnes or these people should even go to that Convention.
I guess it's his line. What he is angling for in effect, is keep
your options open. Don't get tied in with an organization now,
because you may want to bring

P Texans for Nixon, I know, I know (unintelligible).

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M Well, on the other side of the coin, of course, our Republican friends are getting itchy and I keep telling them to go out and write you some more Republicans -- but they say well, we're going to lose good people to the gubernatorial campaign, etc., etc.

P Let 'em go.

H So what?

P Let them go. They don't -- that doesn't make any difference. Hold it firm. We need Texas Democrats. We don't win Texas -- we haven't won it yet -- but you don't win it with Republicans. We never have. And let's just face it, that's the way the score is. Tower has won it once or twice but -- accidents, pure accidents. (Unintelligible) any Democrat, believe me, by any Democrat (unintelligible) committee of that sort is better. Rather than that fellow who is finance chairman down there. What's his name?

H Al Fay

P Al Fay

M You mean Peter O'Donnell? Peter's left.

H He's left?

M Peter quit. He's (unintelligible) national committee (unintelligible).

H I'll be darned.

M Agnitch is the new national committeeman.

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P Yeah.

H O'Donnell was such a horrible whiner.

P Ohio!

M Ohio we still have the Bliss.

P Bliss is still.

M Situation.

P I think going for the old timer there is a bad idea. What do you think Bob?

H I think it is a good idea.

M Well, we have to, Mr. President -- almost have to -- to keep the Taft forces and the Rhodes forces and the rest of them.

P Well, we've got to go for the young too and the rest, but I guess Bliss is

M Well, Bliss is going to come back to work for me, you see, he wants the recognition.

P Great.

M He's not going to be the guy to come and do the nuts and bolts, but he wants the identification with you and back here to re-establish his

P Let me ask you this. We have these curious reports, which, you've seen these of course, (unintelligible) out of Michigan showing we have a chance in Michigan. Do you think we ought to take a whirl at it or not?

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- M We're going to take a whirl at it. We're going to take a whirl at all of them.
- P Well (unintelligible) even Minnesota?
- M Well, I mean a whirl at them to the point where we're going to organize to the teeth and then when it comes to where you're going to spend the money on your media, your mail, your telephone, and things like that, we'll make the judgment a little further down the line.
- P Michigan judgment could be very interesting because if it gets really heated up on busing, if it could, and we're on the one side and they're on the other side, you might win the state on that issue. You agree Bob?
- H Sure.
- M In addition to that, look what you've done for the automobile industry.
- H That was a year ago.
- P Well, still
- M It still can be sold
- P Sold lots of cars
- M And, Milliken is all aboard and he's working hard, and we've got a good chairman out there.

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P I'd even run -- I'd even have some sort of a campaign on that.
I'd even do something in Massachusetts. Do you know why?
Solely because I think it isn't good to let any one area just go
completely.

M No, you can't, because of its rub off on Vermont.

P (unintelligible)

M We've got an added starter there who wants to be the chairman
to get out and work and that's the Governor.

P He does?

H Sargeant?

M Why not? He gets

P Won't hurt us!

M He gets on the tube.

H (Unintelligible).

P Well, he's a good liberal fellow.

H He really wants to get in?

M Yep -- and I think we can get it cleared with Brooke and Volpe
and all the rest of them.

P I think there's a great deal to be said to go for every state.
You know the line I took with these people -- the governors
which they all like to hear -- but you take, I was telling Bob
the other day that in terms of our own plan, of course, we've
got to look at everything you can without killing ourselves or
without being over exposed. But, I feel very strongly that

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P Wallace in or out, we ought to hit of the southern states that I ought to get to Georgia, Alabama, Louisiana, and Mississippi, because I think if we can sweep that South and of course Texas is the big question mark (unintelligible).

M Did I tell you about Connally's poll that Barnes ran down there? Shows the President did very well -- quite different from our polls.

P In Texas?

M Yep.

P Our poll shows five points behind.

M With Muskie, yeah.

P Of course that would be

H That was awhile back.

M Quite awhile back. Yeah. But John Connally's impression is that you're in good shape in Texas with or without Wallace.

P Well, that's hard to say (unintelligible).

M Well we don't have that liquor thing down there this year that we had in '68. That was what really did us in.

H (Unintelligible).

P You know (unintelligible) really kicked Muskie in (unintelligible) that Harris Poll showed him slipping in the trial heats. Apparently (unintelligible) something similar (unintelligible).

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M Well, this has a hell of an impact because the press picks it up and drums on it day in day out.

H Especially because he had been (unintelligible).

P (Unintelligible) Gallup (Unintelligible) even, even in February and now (unintelligible).

M When is this coming out?

P I've got to see the Ambassador -- he's leaving -- he's leaving.

M Oh, is he?

H Going home.

P Yep. Well, anyway John. (Voices fade).

H French Ambassador's name is Kosciusko. Figure that one out.

P For your -- I can't tell you too strongly now with regard to the San Diego thing -- got something to do, do it! Cut our losses and get out. But I do think that from a PR standpoint, Bob, at this time we really ought to.

H (Unintelligible) ahead of time.

P To build (unintelligible). Start a fight right now. Play hard (unintelligible) no question.

M As soon as we see any light through it at all. *

P I'd start right now.

M Give them the guidelines and put them right on it and let them stay right on it. (Unintelligible).

P John, I would start the fight right now. (voices fade away).

P Well, Mr. Ambassador, (The French Ambassador and

12. The President had no knowledge of an attempt by the White House to cover-up involvement in the Watergate affair. Dean told the President that there were things Dean knew the President had no knowledge of.

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NOTE: Objection has been raised by Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

D I know, sir. I can just tell from our conversation that these are things that you have no knowledge of.

P You certainly can! Buggings, etc! Let me say I am keenly aware of the fact Colson, et al., were doing their best to get information as we went along. But they all knew very well they were supposed to comply with the law. There was no question about that! You feel that really the trigger man was really Colson on this then?

D No. He was one of us. He was just in the chain. He helped push the thing.

P All I know about is the time of ITT, he was trying to get something going there because ITT was giving us a bad time.

D I know he used Hunt.

P I knew about that. I didn't know about it, but I knew there was something going on. But I didn't know it was a Hunt.

D What really troubles me is one, will this thing not break some day and the whole thing -- domino situation -- everything starts crumbling, fingers will be pointing. Bob will be accused of things he has never heard of and deny and try to disprove it. It will get real nasty and just be a real bad situation. And the person who will be hurt by it most will be you and the Presidency, and I just don't think --

13. The testimony of Gray before the Senate Select Committee establishes that the origin of the theory of Central Intelligence Agency involvement in the break-in of the DNC was in the FBI and that Gray communicated the theory to Dean on June 22, 1972. Dean confirmed that Gray informed him on June 22, 1972 that one of the FBI theories of the case was that it was a CIA operation and Dean testified that he reported this to Haldeman and Ehrlichman on June 23.

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13b	Dean 3 SSC, 943.....	123

NOTE: Objection has been raised by Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

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assist him in his inquiry. I asked Mr. Dean if he would be reporting directly to the President or through Mr. Haldeman or Mr. Ehrlichman. He informed me that he would be reporting directly to the President.

At this meeting with Mr. Dean there was no discussion of whom we were going to interview or where our leads might take the investigation. We did discuss the scheduling of White House interviews through Mr. Dean and his sitting in on the interviews as counsel to the President.

On Thursday, June 22, 1972, after being briefed by Mr. Charles W. Bates, Assistant Director, General Investigative Division, regarding the latest developments in the *Watergate* case and undoubtedly as a result of information developed at that briefing, I telephoned Director Helms of the CIA. I told him of our thinking that we may be poking into a CIA operation and asked if he could confirm or deny this. He said he had been meeting on this every day with his men, that they knew the people, that they could not figure it out but that there was no CIA involvement.

I met again with Mr. Dean at 6:30 p.m. the same day to again discuss the scheduling of interviews of White House staff personnel and to arrange the scheduling of these interviews directly through the Washington field office rather than through FBI headquarters. At this meeting I also discussed with him our very early theories of the case; namely, that the episode was either a CIA covert operation of some sort simply because some of the people involved had been CIA people in the past, or a CIA money chain, or a political money chain, or a pure political operation, or a Cuban right wing operation, or a combination of any of these. I also told Mr. Dean that we were not zeroing in on any one theory at this time, or excluding any, but that we just could not see any clear reason for this burglary and attempted intercept of communications operation.

I believe that it was at this meeting on June 22 that I told him of our discovery of a bank account in the name of Bernard Barker, who was arrested in the *Watergate* burglary, and the fact that a \$25,000 check associated with Kenneth Dahlberg and four checks drawn on a Mexican bank payable to Manuel Ogarrio, in the total amount of \$89,000, were deposited in the Barker account. I do not have a clear memory of telling him about my telephone call earlier in the day to Director Helms regarding the question of CIA involvement. It is likely that I would have discussed the Helms call with him in connection with our discussion of the theories of the case, since Mr. Helms had informed me that there was no CIA involvement.

On Friday, June 23, 1972, Mr. Bates met with me again to brief me on recent developments. I telephoned Mr. Dean following my meeting with Mr. Bates. I am quite certain that this call again involved the Barker bank account and the Ogarrio and Dahlberg checks. Either in this call or in the meeting of the preceding evening Mr. Dean first raised with me the idea that if we persisted in our efforts to investigate this Mexican money chain we could uncover or become involved in CIA operations. I remember telling Mr. Dean in one of these early telephone calls or meetings that the FBI was going to pursue all leads aggressively unless we were told by the CIA that there was a CIA interest or involvement in this case.

told—and I do not recall specifically who told me this—that this money had absolutely nothing to do with the Watergate; it was unrelated and it was merely a coincidence of fact that Liddy had used Barker to cash the checks and Liddy had returned the money to Sloan. I was told that the investigation of this matter which appeared to be connected with Watergate but wasn't, was unfounded and would merely result in an unnecessary embarrassment to the contributors. Accordingly, Mitchell and Stans both asked me to see if there was anything the White House could do to prevent this unnecessary embarrassment. I, in turn, related these facts to both Haldeman and Ehrlichman. On June 22, at the request of Ehrlichman and Haldeman I went to see Mr. Gray at this office in the early evening to discuss the Dahlberg and Mexican checks and determine how the FBI was proceeding with these matters. Mr. Gray told me that they were pursuing it by seeking to interview the persons who had drawn the checks.

It was during my meeting with Mr. Gray on June 22 that we also talked about his theories of the case as it was beginning to unfold. I remember well that he drew a diagram for me showing his theories. At that time Mr. Gray had the following theories: It was a setup job by a double agent; it was a CIA operation because of the number of former CIA people involved; or it was someone in the reelection committee who was responsible. Gray also had some other theories which he discussed; but I do not recall them now, but I do remember that those I have mentioned were his primary theories.

Before the meeting ended, I recall that Gray and I again had a brief discussion of the problems of an investigation in the White House. Gray expressed his awareness of the potential problems of such an investigation and also told me that if I needed any information I should call either Mark Felt or himself. Gray also informed me that he was going to meet with the CIA to discuss their possible involvement and he would let me know the outcome of that meeting.

On June 23 I reported my conversation with Gray of the preceding evening to Ehrlichman and Haldeman. We discussed the Dahlberg and the Mexican checks and the fact that the FBI was looking for answers regarding these checks. I had the impression that either Ehrlichman or Haldeman might have had a conversation with someone else about this matter but this was mere speculation on my part at that time.

Within the first days of my involvement in the coverup, a pattern had developed where I was carrying messages from Mitchell, Stans, and Mardian to Ehrlichman and Haldeman—and vice versa—about how each quarter was handling the coverup and relevant information as to what was occurring. I was also reporting to them all the information I was receiving about the case from the Justice Department and the FBI. I checked with Haldeman and Ehrlichman before I did anything. One of the few sets of early documents evidencing this working relationship with Haldeman and Ehrlichman relates to responding to Larry O'Brien's letter of June 24 to the President requesting the appointment of a special prosecutor. I have submitted these documents to the committee.

[The documents referred to were marked exhibit No. 34-17.*]

*See p. 1161.

14. Haldeman's testimony before the Senate Select Committee confirms that Dean reported to him the FBI's concern about CIA involvement, and that Haldeman in turn reported this to the President, who ordered Haldeman and Ehrlichman to meet with the CIA officials to insure that the FBI investigation not expose any unrelated covert operation of the CIA. The uncertainty regarding the possibility of uncovering CIA activities was recognized in a memo dated June 28, 1972 from Helms to Walters.

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is that the President was not directly involved himself and he was not told by anyone until March, when he intensified his own investigation. Even then, he was given conflicting and unverified reports that made it impossible to determine the precise truth regarding Watergate or the coverup and, at the outset at least, he was relying primarily on one man, John Dean, who has admitted that he was a major participant in the illegal and improper coverup, a fact unknown to the President until March 1973.

Any attempt on my part at this time to try to identify those who participated in, directed, or knew of the illegal coverup would of necessity be based totally on hearsay.

CONTAINMENT

There was a concern at the White House that activities which had been in no way related to Watergate or to the 1972 political campaign, and which were in the area of national security, would be compromised in the process of the Watergate investigation and the attendant publicity and political furor. The recent public disclosure of the FBI wiretaps on press and NSC personnel, the details of the Plumbers operations, and so on, fully justifies that concern.

As a result of this concern and the FBI's request through Pat Gray to John Dean for guidance regarding some aspects of the Watergate investigation, because of the possibility of CIA involvement, the President directed John Ehrlichman and me to meet with the Director and Deputy Director of the CIA on June 23. We did so and ascertained from them that there had not been any CIA involvement in the Watergate affair and that there was no concern on the part of Director Helms as to the fact that some of the Watergate participants had been involved in the Bay of Pigs operations of the CIA. We discussed the White House concern regarding possible disclosure of non-Watergate-related covert CIA operations or other nonrelated national security activities that had been undertaken previously by some of the Watergate participants, and we requested Deputy Director Walters to meet with Director Gray of the FBI to express these concerns and to coordinate with the FBI, so that the FBI's area of investigation of the Watergate participants not be expanded into unrelated matters which could lead to disclosures of earlier national security or CIA activities.

Walters agreed to meet with Gray as requested. I do not recall having any other communication, or meeting, with Walters, Helms, or Gray on this subject. I did not, at this meeting, or at any other time, ask the CIA to participate in any Watergate coverup, nor did I ever suggest that the CIA take any responsibility for the Watergate break-in. I believe that the action I took with the CIA was proper, according to the President's instructions, and clearly in the national interest.

There were a number of newspaper stories and allegations raised during the period following the Watergate break-in that posed new questions regarding the facts of Watergate or related matters. Whenever any such questions arose, the President would again ask that the facts be ascertained and made known publicly as completely and quickly as possible, but there always seemed to be some reason why

28 June 1972

EYES ONLY

DV

MEMORANDUM FOR: Deputy Director

SUBJECT: Watergate Affair

1. Acting Director Gray of the FBI 'phoned me this morning to cancel our meeting scheduled for 2:30 this afternoon. He indicated that he would not be able to get together until next week. I informed him that I would be away but that you would be available with _____ and _____ for any such meeting. I did, however, use the opportunity of this call to make two points to Acting Director Gray: 1) That I would appreciate his calling off interviews with Karl Wagner and John Caswell (this he agreed to do); and 2) that Kenneth Harry Dahlberg was no agent of the CIA and that we had no ties to him. I stated that our last verifiable contact with him was in May 1961. Acting Director Gray confirmed that this is the same Kenneth Dahlberg about whom he was inquiring as soon as I identified the gentleman as the President of Dahlberg Company in Minneapolis.

2. I informed _____ and _____ this morning, in preparation for the scheduled meeting this afternoon, that the Agency is attempting to "distance itself" from this investigation and that I wanted them along as "reference files" to participate in the conversation when requested. I told them that I wanted no free-wheeling exposition of hypotheses or any effort made to conjecture about responsibility or likely objectives of the Watergate intrusion. "In short, at such a meeting, it is up to the FBI to lay some cards on the table. Otherwise, we are unable to be of help. In addition, we still adhere to the request that they confine themselves to the personalities already arrested or directly under suspicion and that they desist from expanding this investigation into other areas which may well, eventually, run afoul of our operations."

3. This brings you up-to-date as of 3:00, 28 June.

PH
Richard Helms
Director

15. The President stated on May 22, 1973, that it did seem possible to him that because of the involvement of former CIA personnel, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in. The President stated he was also concerned that the Watergate investigation might lead to an inquiry into the activities of the Special Investigations Unit. Gray testified that on July 6, 1972, the President told him to continue to conduct his aggressive and thorough investigation of the Watergate affair.

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inzig, who is now an associate judge of the U.S. Court of Claims.

Mr. Sampson has been Acting Administrator of General Services since June 2, 1972. He joined the General Services Administration in 1969 as Commissioner of the Federal Supply Service. From 1970 to 1972 he was Commissioner of the Public Buildings Service in GSA and the first Deputy Administrator of GSA for Special Projects.

He came to the General Services Administration after 6 years in Pennsylvania State government, where he was secretary of administration and budget secretary under Gov. Raymond P. Shafer, and deputy secretary for procurement, department of property and supplies, under Gov. William W. Scranton. Prior to entering government service, he was employed by the General Electric Co. for 12 years.

Mr. Sampson was born on October 8, 1926, in Warren, R.I. He received his B.S. degree in business administration from the University of Rhode Island in 1951 and has done graduate work at the George Washington University.

Active in several professional organizations, Mr. Sampson was presented the Synergy III Award for outstanding contributions toward the advancement of architecture by the Society of American Registered Architects in 1972.

1973 he was selected as one of the Top Ten Public Works Men of the Year, and he was named an honorary member of the American Institute of Architects.

He and his wife, Blanche, have four children and reside in Washington, D.C.

NOTES: For the President's statement upon announcing his intention to nominate Mr. Sampson, see the preceding item.

I will not abandon my responsibilities. I will continue to do the job I was elected to do.

In the accompanying statement, I have set forth the facts as I know them as they relate to my own role.

With regard to the specific allegations that have been made, I can and do state categorically:

1. I had no prior knowledge of the Watergate operation.
2. I took no part in, nor was I aware of, any subsequent efforts that may have been made to cover up Watergate.
3. At no time did I authorize any offer of executive clemency for the Watergate defendants, nor did I know of any such offer.
4. I did not know, until the time of my own investigation, of any effort to provide the Watergate defendants with funds.
5. At no time did I attempt, or did I authorize others to attempt, to implicate the CIA in the Watergate matter.
6. It was not until the time of my own investigation that I learned of the break-in at the office of Mr. Ellsberg's psychiatrist, and I specifically authorized the furnishing of this information to Judge Byrne.
7. I neither authorized nor encouraged subordinates to engage in illegal or improper campaign tactics.

In the accompanying statement, I have sought to provide the background that may place recent allegations in perspective. I have specifically stated that executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters under investigation. I want the public to learn the truth about Watergate and those guilty of any illegal actions brought to justice.

The Watergate Investigation

Statements by the President. May 22, 1973

Recent news accounts growing out of testimony in the Watergate investigations have given grossly misleading impressions of many of the facts, as they relate both to my own role and to certain unrelated activities involving national security.

Already, on the basis of second- and third-hand hearsay testimony by persons either convicted or themselves under investigation in the case I have found myself accused of involvement in activities I never heard of until I read about them in news accounts.

These impressions could also lead to a serious misunderstanding of those national security activities which, though unrelated to Watergate, have become entangled in the case. They could lead to further compromise of sensitive national security information.

Allegations surrounding the Watergate affair have so escalated that I feel a further statement from the President is required at this time.

A climate of sensationalism has developed in which even second- or third-hand hearsay charges are headlined as fact and repeated as fact.

Important national security operations which themselves had no connection with Watergate have become entangled in the case.

As a result, some national security information has already been made public through court orders, through the subpoenaing of documents, and through testimony witnesses have given in judicial and Congressional proceedings. Other sensitive documents are now threatened with disclosure. Continued silence about those operations would compromise rather than protect them, and would also serve to perpetuate a grossly distorted view—which recent partial disclosures have given—of the nature and purpose of those operations.

The purpose of this statement is threefold:

—First, to set forth the facts about my own relationship to the Watergate matter;

—Second, to place in some perspective some of the more sensational—and inaccurate—of the charges that have filled the headlines in recent days, and also some of the matters that are currently being discussed in Senate testimony and elsewhere;

—Third, to draw the distinction between national security operations and the Watergate case. To put the other matters in perspective, it will be necessary to describe the national security operations first.

In citing these national security matters, it is not my intention to place a national security “cover” on Watergate, but rather to separate them out from Watergate—and at the same time to explain the context in which certain actions took place that were later misconstrued or misused.

Long before the Watergate break-in, three important national security operations took place which have subsequently become entangled in the Watergate case.

—The first operation, begun in 1969, was a program of wiretaps. All were legal, under the authorities then existing. They were undertaken to find and stop serious national security leaks.

—The second operation was a reassessment, which I ordered in 1970, of the adequacy of internal security measures. This resulted in a plan and a directive to strengthen our intelligence operations. They were protested by Mr. Hoover, and as a result of his protest they were not put into effect.

—The third operation was the establishment, in 1971, of a Special Investigations Unit in the White House. Its primary mission was to plug leaks of vital security information. I also directed this group to prepare an accurate history of certain crucial national security matters which occurred under prior administrations, on which the Government’s records were incomplete.

Here is the background of these three security operations initiated in my Administration.

1969 WIRETAPS

By mid-1969, my Administration had begun a number of highly sensitive foreign policy initiatives. They were aimed at ending the war in Vietnam, achieving a settlement in the Middle East, limiting nuclear arms, and establishing new relationships among the great powers. These involved highly secret diplomacy. They were closely interrelated. Leaks of secret information about any one could endanger all.

Exactly that happened. News accounts appeared in 1969, which were obviously based on leaks—some of them extensive and detailed.

initiatives unless further leaks could be prevented. It required finding the source of the leaks.

In order to do this, a special program of wiretaps was instituted in mid-1969 and terminated in February 1971. Fewer than 20 taps, of varying duration, were involved. They produced important leads that made it possible to tighten the security of highly sensitive materials. I authorized this entire program. Each individual tap was undertaken in accordance with procedures legal at the time and in accord with longstanding precedent.

The persons who were subject to these wiretaps were determined through coordination among the Director of the FBI, my Assistant for National Security Affairs, and the Attorney General. Those wiretapped were selected on the basis of access to the information leaked, material in security files, and evidence that developed as the inquiry proceeded.

Information thus obtained was made available to senior officials responsible for national security matters in order to curtail further leaks.

THE 1970 INTELLIGENCE PLAN

In the spring and summer of 1970, another security problem reached critical proportions. In March a wave of bombings and explosions struck college campuses and cities. There were 400 bomb threats in one 24-hour period in New York City. Rioting and violence on college campuses reached a new peak after the Cambodian operation and the tragedies at Kent State and Jackson State. The 1969-70 school year brought nearly 1,800 campus demonstrations and nearly 250 cases of arson on campus. Many colleges closed. Gun battles between guerrilla-style groups and police were taking place. Some of the disruptive activities were receiving foreign support.

Complicating the task of maintaining security was the fact that, in 1965, certain types of undercover FBI operations that had been conducted for many years had been suspended. This also had substantially impaired our ability to collect foreign intelligence information. At the same time, the relationships between the FBI and other intelligence agencies had been deteriorating. By May 1970, FBI Director Hoover shut off his agency’s liaison with the CIA altogether.

On June 5, 1970, I met with the Director of the FBI (Mr. Hoover), the Director of the Central Intelligence Agency (Mr. Richard Helms), the Director of the Defense Intelligence Agency (Gen. Donald V. Bennett), and the Director of the National Security Agency (Adm. John G. Gaylor). We discussed the urgent need for better intelligence operations. I appointed Director Hoover chairman of an interagency committee to prepare recommendations.

memorandum of the options approved. After reconsideration, however, prompted by the opposition of Director Hoover, the agencies were notified 5 days later, on July 28, that the approval had been rescinded. The options initially approved had included resumption of certain intelligence operations which had been suspended in 1966. These in turn had included authorization for surreptitious entry—breaking and entering, in effect—on specified categories of targets in specified situations related to national security.

Because the approval was withdrawn before it had been implemented, the net result was that the plan for expanded intelligence activities never went into effect.

The documents spelling out this 1970 plan are extremely sensitive. They include—and are based upon—assessments of certain foreign intelligence capabilities and procedures, which of course must remain secret. It was this unused plan and related documents that John Dean removed from the White House and placed in a safe deposit box, giving the keys to Judge Sirica. The same plan, still unused, is being headlined today.

Coordination among our intelligence agencies continued to fall short of our national security needs. In July 1970, having earlier discontinued the FBI's liaison with the CIA, Director Hoover ended the FBI's normal liaison with all other agencies except the White House. To help remedy this, an Intelligence Evaluation Committee was created in December 1970. Its members included representatives of the White House, CIA, FBI, NSA, the Departments of Justice, Treasury, and Defense, and the Secret Service.

The Intelligence Evaluation Committee and its staff were instructed to improve coordination among the intelligence community and to prepare evaluations and estimates of domestic intelligence. I understand that its activities are now under investigation. I did not authorize nor do I have any knowledge of any illegal activity by this Committee. If it went beyond its charter and did engage in any illegal activities, it was totally without my knowledge or authority.

THE SPECIAL INVESTIGATIONS UNIT

On Sunday, June 13, 1971, The New York Times published the first installment of what came to be known as "The Pentagon Papers." Not until a few hours before publication did any responsible Government official know that they had been stolen. Most officials did not know they existed. No senior official of the Government had read them or knew with certainty what they contained.

All the Government knew, at first, was that the papers comprised 47 volumes and some 7,000 pages, which had been taken from the most sensitive files of the Departments of State and Defense and the CIA covering military and

Moreover, a majority of the documents published with the first three installments in The Times had not been included in the 47-volume study—raising serious questions about what and how much else might have been taken.

There was every reason to believe this was a security leak of unprecedented proportions.

It created a situation in which the ability of the Government to carry on foreign relations even in the best of circumstances could have been severely compromised. Other governments no longer knew whether they could deal with the United States in confidence. Against the background of the delicate negotiations the United States was then involved in on a number of fronts—with regard to Vietnam, China, the Middle East, nuclear arms limitations, U.S.-Soviet relations, and others—in which the utmost degree of confidentiality was vital, it posed a threat so grave as to require extraordinary actions.

Therefore during the week following the Pentagon Papers publication, I approved the creation of a Special Investigations Unit within the White House—which later came to be known as the "plumbers." This was a small group at the White House whose principal purpose was to stop security leaks and to investigate other sensitive security matters. I looked to John Ehrlichman for the supervision of this group.

Egil Krogh, Mr. Ehrlichman's assistant, was put in charge. David Young was added to this unit, as were E. Howard Hunt and G. Gordon Liddy.

The unit operated under extremely tight security rules. Its existence and functions were known only to a very few persons at the White House. These included Messrs. Haldeman, Ehrlichman, and Dean.

At about the time the unit was created, Daniel Ellsberg was identified as the person who had given the Pentagon Papers to The New York Times. I told Mr. Krogh that as a matter of first priority, the unit should find out all it could about Mr. Ellsberg's associates and his motives. Because of the extreme gravity of the situation, and not then knowing what additional national secrets Mr. Ellsberg might disclose, I did impress upon Mr. Krogh the vital importance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal.

However, because of the emphasis I put on the crucial importance of protecting the national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention.

Consequently, as President, I must and do accept responsibility for such actions despite the fact that I did not at the time approve or had knowledge of them.

I also assigned the unit a number of other investigatory matters, dealing in part with compiling an accurate record of events related to the Vietnam war, on which the

records having been removed with the change of administrations) and which bore directly on the negotiations then in progress. Additional assignments included tracing down other national security leaks, including one that seriously compromised the U.S. negotiating position in the SALT talks.

The work of the unit tapered off around the end of 1971. The nature of its work was such that it involved matters that, from a national security standpoint, were highly sensitive then and remain so today.

These intelligence activities had no connection with the break-in of the Democratic headquarters, or the aftermath.

I considered it my responsibility to see that the Watergate investigation did not impinge adversely upon the national security area. For example, on April 18, 1973, when I learned that Mr. Hunt, a former member of the Special Investigations Unit at the White House, was to be questioned by the U.S. Attorney, I directed Assistant Attorney General Petersen to pursue every issue involving Watergate but to confine his investigation to Watergate and related matters and to stay out of national security matters. Subsequently, on April 25, 1973, Attorney General Kleindienst informed me that because the Government had clear evidence that Mr. Hunt was involved in the break-in of the office of the psychiatrist who had treated Mr. Ellsberg, he, the Attorney General, believed that despite the fact that no evidence had been obtained from Hunt's acts, a report should nevertheless be made to the court trying the Ellsberg case. I concurred, and directed that the information be transmitted to Judge Byrne immediately.

WATERGATE

The burglary and bugging of the Democratic National Committee headquarters came as a complete surprise to me. I had no inkling that any such illegal activities had been planned by persons associated with my campaign; if I had known, I would not have permitted it. My immediate reaction was that those guilty should be brought to justice, and, with the five burglars themselves already in custody, I assumed that they would be.

Within a few days, however, I was advised that there was a possibility of CIA involvement in some way.

It did seem to me possible that, because of the involvement of former CIA personnel, and because of some of their apparent associations, the investigation could lead to the uncovering of covert CIA operations totally unrelated to the Watergate break-in.

In addition, by this time, the name of Mr. Hunt had surfaced in connection with Watergate, and I was alerted

the fact that he had previously been a member of the Special Investigations Unit in the White House. Therefore, I was also concerned that the Watergate investigation might well lead to an inquiry into the activities of the Special Investigations Unit itself.

In this area, I felt it was important to avoid disclosure of the details of the national security matters with which the group was concerned. I knew that once the existence of the group became known, it would lead inexorably to a discussion of these matters, some of which remain, even today, highly sensitive.

I wanted justice done with regard to Watergate; but in the scale of national priorities with which I had to deal—and not at that time having any idea of the extent of political abuse which Watergate reflected—I also had to be deeply concerned with ensuring that neither the covert operations of the CIA nor the operations of the Special Investigations Unit should be compromised. Therefore, I instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the investigation of the break-in not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit—and to see that this was personally coordinated between General Walters, the Deputy Director of the CIA, and Mr. Gray of the FBI. It was certainly not my intent, nor my wish, that the investigation of the Watergate break-in or of related acts be impeded in any way.

On July 6, 1972, I telephoned the Acting Director of the FBI, L. Patrick Gray, to congratulate him on his successful handling of the hijacking of a Pacific Southwest Airlines plane the previous day. During the conversation Mr. Gray discussed with me the progress of the Watergate investigation, and I asked him whether he had talked with General Walters. Mr. Gray said that he had, and that General Walters had assured him that the CIA was not involved. In the discussion, Mr. Gray suggested that the matter of Watergate might lead higher. I told him to press ahead with his investigation.

It now seems that later, through whatever complex of individual motives and possible misunderstandings, there were apparently wide-ranging efforts to limit the investigation or to conceal the possible involvement of members of the Administration and the campaign committee.

I was not aware of any such efforts at the time. Neither, until after I began my own investigation, was I aware of any fundraising for defendants convicted of the break-in at Democratic headquarters, much less authorize any such fundraising. Nor did I authorize any offer of executive clemency for any of the defendants.

In the weeks and months that followed Watergate, I asked for, and received, repeated assurances that Mr. Dean's own investigation (which included reviewing files and sitting in on FBI interviews with White House personnel) had cleared everyone then employed by the White House of involvement.

In summary, then:

- (1) I had no prior knowledge of the Watergate burglary operation, or of any illegal surveillance activities for political purposes.
- (2) Long prior to the 1972 campaign, I did set in motion certain internal security measures, including legal

wiretaps, which I felt were necessary from a national security standpoint and, in the climate then prevailing, also necessary from a domestic security standpoint.

(3) People who had been involved in the national security operations later, without my knowledge or approval, undertook illegal activities in the political campaign of 1972.

(4) Elements of the early post-Watergate reports led me to suspect, incorrectly, that the CIA had been in some way involved. They also led me to surmise, correctly, that since persons originally recruited for covert national security activities had participated in Watergate, an unrestricted investigation of Watergate might lead to and expose those covert national security operations.

(5) I sought to prevent the exposure of these covert national security activities, while encouraging those conducting the investigation to pursue their inquiry into the Watergate itself. I so instructed my staff, the Attorney General, and the Acting Director of the FBI.

(6) I also specifically instructed Mr. Haldeman and Mr. Ehrlichman to ensure that the FBI would not carry its investigation into areas that might compromise these covert national security activities, or those of the CIA.

(7) At no time did I authorize or know about any offer of executive clemency for the Watergate defendants. Neither did I know until the time of my own investigation of any efforts to provide them with funds.

CONCLUSION

With hindsight, it is apparent that I should have given more heed to the warning signals I received along the way about a Watergate cover-up and less to the reassurances.

With hindsight, several other things also become clear:

—With respect to campaign practices, and also with respect to campaign finances, it should now be obvious that no campaign in history has ever been subjected to the kind of intensive and searching inquiry that has been focused on the campaign waged in my behalf in 1972.

It is clear that unethical, as well as illegal, activities took place in the course of that campaign.

None of these took place with my specific approval or knowledge. To the extent that I may in any way have contributed to the climate in which they took place, I did not intend to; to the extent that I failed to prevent them, I should have been more vigilant.

It was to help ensure against any repetition of this in the future that last week I proposed the establishment of a top-level, bipartisan, independent commission to recommend a comprehensive reform of campaign laws and practices. Given the priority I believe it deserves, such reform should be possible before the next Congressional elections in 1974.

—It now appears that there were persons who may have gone beyond my directives, and sought to expand on

my efforts to protect the national security operations in order to cover up any involvement they or certain others might have had in Watergate. The extent to which this is true, and who may have participated and to what degree, are questions that it would not be proper to address here. The proper forum for settling these matters is in the courts.

—To the extent that I have been able to determine what probably happened in the tangled course of this affair, on the basis of my own recollections and of the conflicting accounts and evidence that I have seen, it would appear that one factor at work was that at critical points various people, each with his own perspective and his own responsibilities, saw the same situation with different eyes and heard the same words with different ears. What might have seemed insignificant to one seemed significant to another; what one saw in terms of public responsibility, another saw in terms of political opportunity; and mixed through it all, I am sure, was a concern on the part of many that the Watergate scandal should not be allowed to get in the way of what the Administration sought to achieve.

The truth about Watergate should be brought out—in an orderly way, recognizing that the safeguards of judicial procedure are designed to find the truth, not to hide the truth.

With his selection of Archibald Cox—who served both President Kennedy and President Johnson as Solicitor General—as the special supervisory prosecutor for matters related to the case, Attorney General-designate Richardson has demonstrated his own determination to see the truth brought out. In this effort he has my full support.

Considering the number of persons involved in this case whose testimony might be subject to a claim of executive privilege, I recognize that a clear definition of that claim has become central to the effort to arrive at the truth.

Accordingly, executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up.

I want to emphasize that this statement is limited to my own recollections of what I said and did relating to security and to the Watergate. I have specifically avoided any attempt to explain what other parties may have said and done. My own information on those other matters is fragmentary, and to some extent contradictory. Additional information may be forthcoming of which I am unaware. It is also my understanding that the information which has been conveyed to me has also become available to those prosecuting these matters. Under such circumstances, it would be prejudicial and unfair of me to state my opinions on the activities of others; those judgments must be left to the judicial process, our best hope for achieving the just result that we all seek.

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for any one man or group of men to control an FBI investigation even if one wished to do so.

After General Walters left the office I sat at my desk quietly and mulled over our conversation. I was confused, uncertain and uneasy. I was concerned enough to believe that the President would be informed.

I decided to call Clark MacGregor to request that he inform the President of what I would tell him. I decided on Mr. MacGregor because I knew he was close to the President and had his confidence.

At 10:51 a.m., Thursday, July 6, 1972, I spoke to Mr. MacGregor at San Clemente, Calif., via White House switchboard and I told him that Dick Walters and I were uneasy and concerned about the confusion that existed over the past 2 weeks in determining with certainty whether there was or was not CIA interest in people that the FBI wishes to interview in connection with the Watergate investigation. These, of course, are not my exact words but they do express the thoughts that I conveyed to him.

Again, although these are not the exact words, I also conveyed to him the thought that I felt that people on the White House staff were careless and indifferent in their use of the CIA and the FBI. I also expressed the thought that this activity was injurious to the CIA and the FBI, and that these White House staff people were wounding the President.

I asked if he would please inform the President, and it is by best recollection that he said he would handle it.

Thirty-seven minutes later, at 11:28 a.m. on Thursday, July 6, 1972, the President called me. He expressed his congratulations to the FBI and asked that I express his congratulations to the agents in San Francisco who successfully terminated a hijacking there the previous day. I thanked the President and then said to him, and to the very best of my recollection these are the words:

Mr. President, there is something I want to speak to you about. Dick Walters and I feel that people on your staff are trying to mortally wound you by using the CIA and FBI and by confusing the question of CIA interest in, or not in, people the FBI wishes to interview.

I have just talked to Clark MacGregor and asked him to speak to you about this.

There was a slight pause and the President said, "Pat, you just continue to conduct your aggressive and thorough investigation."

Following this conversation I experienced no further concerns of this kind. I believed that if there was anything to the concerns I expressed to the President or to Mr. MacGregor that I would hear further in the matter. I did not. Frankly, I came to the conclusion that General Walters and I had been alarmists, a belief I held for many months.

General Walters came to my office again on July 12, 1972. At this meeting he apparently gave me a memorandum which, I am now informed, contained information to the effect that the CIA furnished certain aliases to Liddy and Hunt and certain paraphernalia to Hunt. Until I briefly saw a copy of this memorandum this spring in the offices of the U.S. Attorney for the District of Columbia containing a notation of its receipt in my handwriting, I had no recollection of this memorandum. I still do not recall noting its contents at the time.

16. The President indicated that he was unaware that Gray had destroyed documents found in Hunt's safe when told by Henry Peterson on April 17, 1973.

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16a Transcript, April 17, 1973, 2:45-3:49 p.m., p. 1098.....	138
16b Transcript, April 16, 1973, 1:39-3:25 p.m., p. 910.....	139

HP Yes sir - I'll tell you what happened. He said he met with Ehrlichman - in Ehrlichman's office - Dean was there and they told him they had some stuff in Hunt's office that was utterly unrelated to the Watergate Case. They gave him two manilla envelopes that were sealed. He took them. He says, they said get rid of them. Dean doesn't say that. Dean says I didn't want to get rid of them so I gave them to Gray. But in any event, Gray took them back, and I said Pat where are they, and he said I burned them. And I said -

P He burned them?

HP I said that's terrible.

P Unrelated - only thing he can say was - he did it because it was political stuff I suppose?

HP Well, you know, the cynics are not going to believe it was unrelated.

P Oh yes of course.

HP I said, did you read it?

P Who handed it to him, Dean? Who knows the contents?

HP Dean and Ehrlichman. Dean -- Gray says he never looked at it - never read it.

P Did Dean? - did we ask Dean what the contents were?

HP I didn't ask Dean because he said it was -

-69-

HP We're going to go back to him again.

P (Inaudible). I'll get you out of here. (Inaudible) yet.

HP By the way Mr. President, I think that.

P (Inaudible) evidence -- not evidence? (Inaudible) explain that the evidence was not evidence -- is that right? The stuff out of his safe?

HP Well -- that's.

P What would you get after him on this -- destruction of evidence?

HP Well you see the point of it is -- there are two other items that -- according to the defense -- Hunt's defense -- that were missing. Both of which were notebooks.

P , Hunt's notebooks?

HP And we can't find those notebooks. Dean says, Fielding says, and Kehrli says, they have no recollection of those notebooks.

P Yeah.

HP Hunt says they were there, and --

P So --

HP So only to the extent that the notebooks are missing which Hunt says they're germane.

P (Inaudible) doe he tell us very much, huh?

HP No sir

17. Dean did not disclose until November 2, 1973, while being questioned by attorneys of the Special Prosecutor's office, that he had personally destroyed documents from Hunt's safe.

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[P R O C E E D I N G S]

THE DEPUTY CLERK: Criminal Action No. 1827-72,
United States of America versus E. Howard Hunt, James W. McCord,
Bernard L. Barker, Eugenio R. Martinez, Frank A. Sturgis and
Virgilio R. Gonzales.

Mr. Philip Lacovara and Mr. Richard Ben-Veniste,
counsel for the government.

Mr. Sidney Sacks, counsel for Mr. Hunt.

Mr. Bernard L. Fensterwald, counsel for Mr. McCord.

Mr. Daniel E. Shultz, counsel for Messrs. Barker,
Martinez, Sturgis and Gonzalez.

THE COURT: Mr. Shultz --

MR. SHULTZ: Yes, Your Honor.

THE COURT: As to the defendants whom you represent,
do you waive their right to be present here today?

MR. SHULTZ: Yes, I do, Your Honor.

THE COURT: Mr. Shultz, I will hear you with reference
to the motion filed by your clients to withdraw their pleas of
guilty. I will allow you one half-hour and then I will allow
the Government one half-hour to answer.

MR. BEN-VENISTE: May I make a brief statement of
facts?

THE COURT: Yes.

MR. BEN-VENISTE: Your Honor, this is in connection
with the motion made by the defendant Hunt and it relates to

evidence which has recently come into our possession from John W. Dean III. As you know, Your Honor, Mr. Dean pleaded guilty on October 19th before this Court and following that time we had occasion to interview him from time to time but the developments over the last few weeks inhibited us to some extent from doing that as thoroughly as we would like. However last Friday, while we were in Court, members of our staff interviewed Mr. Dean and questioned him with respect to the contents of Mr. Hunt's safe. This was the first occasion on which members of the Special Prosecution Force had the opportunity to question him about this matter. Mr. Dean related that at some time in late January, 1973, he discovered a file folder in his office containing the President's estate plan, two cloth-bound notebooks with cardboard covers and lined pages containing some handwriting. Dean at that time recalled that these had come from Howard Hunt's safe. Dean did not look at the contents and cannot recall what might have been in them. He assumed it related to the Ellsberg break-in. He shredded both notebooks in his shredder.

At the same time he also discovered a pop-up address book containing some names with each page x'd out in ink. Dean threw this pop-up notebook into the waste basket at the time.

These are facts, of course, which defense counsel should know about. We are apprising the Court of them at this time for that purpose. It is our belief that this does not

18. The President was unaware prior to March 21, 1973, that Magruder and Porter perjured themselves to a grand jury. On April 17, 1973, the President advised Ehrlichman and Haldeman against perjury.

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18a Transcript, March 21, 1973, 10:12-11:55 a.m. pp. 182-183.....	146
18b Transcript, April 17, 1973, 12:35-2:20 p.m. p. 1022.....	148

NOTE: Objection has been raised by Congresswoman Holtzman and Congressman Seiberling that the first sentence is a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

D From Magruder, long after the fact.

P Magruder is (unintelligible)

D Yeah. Magruder is totally knowledgeable on the whole thing.

P Yeah.

D Alright now, we have gone through the trial. I don't know if Mitchell has perjured himself in the Grand Jury or not.

P Who?

D Mitchell. I don't know how much knowledge he actually had. I know that Magruder has perjured himself in the Grand Jury. I know that Porter has perjured himself in the Grand Jury.

P Who is Porter? (unintelligible)

D He is one of Magruder's deputies. They set up this scenario which they ran by me. They said, "How about this?" I said, "I don't know. If this is what you are going to hang on, fine."

P What did they say in the Grand Jury?

D They said, as they said before the trial in the Grand Jury, that Liddy had come over as Counsel and we knew he had these capacities to do legitimate intelligence. We had no idea what he was doing. He was given an authorization of \$250,000 to collect information, because our surrogates were out on the road. They had no protection, and we had information that there were going to be demonstrations against them, and that we had to have a plan as to what liabilities they

were going to be confronted with and Liddy was charged with doing this. We had no knowledge that he was going to bug the DNC.

P The point is, that is not true?

D That's right.

P Magruder did know it was going to take place?

D Magruder gave the instructions to be back in the DNC.

P He did?

D Yes.

P You know that?

D Yes.

P I see. O.K.

D I honestly believe that no one over here knew that. I know that as God is my maker, I had no knowledge that they were going to do this.

P Bob didn't either, or wouldn't have known that either. You are not the issue involved. Had Bob known, he would be.

D Bob -- I don't believe specifically knew that they were going in there.

P I don't think so.

D I don't think he did. I think he knew that there was a capacity to do this but he was not given the specific direction.

P Did Strachan know?

- 36 -

1022

11 month. He's been --

P I called him this morning and told him I wanted to
talk to him later to ask him about that appointment
June 19, but I don't think I better get into that
any more.

E I don't either.

P And, and he's going to give me some song and dance.

E Well (unintelligible) for your private information, I have
gone back to the participants in that meeting where I
was supposed to have said, "send Hunt out of the country."
To a man, they say it didn't happen. And two of them
said, "Gee if either one of them --"

P What about the meeting?

E And they said, "If that had happened, it would have been
burned into my recollection." The sort of thing like
you ordering --

P You better damned well remember being -- The main
thing is this, John, and when you meet with the lawyers --
and you Bob, and I hope Strachan has been told --
believe me -- don't try to hedge anything before the
damned Grand Jury. I'm not talking about morality,
but I'm talking about the vulnerabilities.

T Sure, good advice.

P Huh?

19. John Dean advised the President on March 21, 1973, of Hunt's demand for approximately \$120,000 for legal fees and family support. The President explored the option of meeting Hunt's demands so as to secure the time needed to consider alternative courses. The President was not concerned with the possible Watergate related disclosures, but rather which disclosure of the National Security matters Hunt had been involved in as a member of the Plumbers.

The President advised Dean that the money could not be paid because it would look like a cover-up. At another point in the conversations the President requested advice as to whether or not the money should be paid. Later the President concludes that Hunt will blow the whistle no matter what is done for him.

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19a Transcript, March 21, 1973, 10:12-11:55 a.m., p. 224.....	150
19b Transcript, March 21, 1973, 10:12-11:55 a.m., p. 197.....	151
19c Transcript, March 21, 1973, 10:12-11:55 a.m., pp. 236-237.....	152
19d Transcript, March 21, 1973, 10:12-11:55 a.m., p. 242.....	154
19e Transcript, March 21, 1973, 10:12-11:55 a.m., p. 243.....	155

H Right.

P He is playing hard ball with regard to Ehrlichman for example, and that sort of thing. He knows what he's got.

H What's he planning on, money?

D Money and --

H Really?

P It's about \$120,000. That's what, Bob. That would be easy. It is not easy to deliver, but it is easy to get. Now,

H If the case is just that way, then the thing to do if the thing cranks out.

P If, for example, you say look we are not going to continue to -- let's say, frankly, on the assumption that if we continue to cut our losses, we are not going to win. But in the end, we are going to be bled to death. And in the end, it is all going to come out anyway: Then you get the worst of both worlds. We are going to lose, and people are going to --

H And look like dopes!

P And in effect, look like a cover-up. So that we can't do. Now the other line, however, if you take that line, that we are not going to continue to cut our losses, that means then we have to look square in the eye as to what the hell those losses are, and see which people can -- so we can

night and --

F It seems to me we have to keep the cap on the bottle that much, or we don't have any options.

D That's right.

P Either that or it all blows right now?

D That's the question.

P We have Hunt, Krogh. Well go ahead with the other ones.

D Now we've got Kalmbach. Kalmbach received, at the close of the '68 campaign in January of 1969, he got a million \$700,000 to be custodian for. That came down from New York, and was placed in safe deposit boxes here. Some other people were on the boxes. And ultimately, the money was taken out to California. Alright, there is knowledge of the fact that he did start with a million seven. Several people know this. Now since 1969, he has spent a good deal of this money, and accounting for it is going to be very difficult for Herb. For example, he has spent close to \$500,000 on private polling. That opens up a whole new thing. It is not illegal, but more of the same thing.

P Everybody does polling.

D That's right. There is nothing criminal about it. It's private polling.

P People have done private polling all through the years. There is nothing improper.

thing. Call everybody in the White House, and I want them to come and I want them to go to the Grand Jury.

D This may happen without even our calling for it when these --
P Vesco?

D No. Well, that is one possibility. But also when these people go back before the Grand Jury here, they are going to pull all these criminal defendants back before the Grand Jury and immunize them.

P Who will do this?

D The U.S. Attorney's Office will.

P To do what?

To let them talk about anything further they want to talk about.

P But what do they gain out of it?

D Nothing.

P To hell with it!

D They're going to stonewall it, as it now stands. Excepting Hunt. That's why his threat.

H It's Hunt opportunity.

P That's why for your immediate things you have no choice but to come up with the \$120,000, or whatever it is. Right?

D That's right.

P Would you agree that that's the prime thing that you damn well better get that done?

- D Obviously he ought to be given some signal anyway.
- P (Expletive deleted), get it. In a way that -- who is going to talk to him? Colson? He is the one who is supposed to know him?
- D Well, Colson doesn't have any money though. That is the thing. That's been one of the real problems. They haven't been able to raise a million dollars in cash. (unintelligible) has been just a very difficult problem as we discussed before. Mitchell has talked to Pappas, and John asked me to call him last night after our discussion and after you had met with John to see where that was. And I said, "Have you talked to Pappas?" He was at home, and Martha picked up the phone so it was all in code. I said, "Have you talked to the Greek?" And he said, "Yes, I have." I said, "Is the Greek bearing gifts?" He said, "Well, I'll call you tomorrow on that."
- P Well look, what it is you need on that? When --- I am not familiar with the money situation.
- D It sounds easy to do and everyone is out there doing it and that is where our breakdown has come every time.
- P Well, if you had it, how would you get it to somebody?
- D Well, I got it to LaRue by just leaving it in mail boxes and things like that. And someone phones Hunt to come and pick it up. As I say, we are a bunch of amateurs in that

P Yeah. It would get Magruder, and it could possibly get Colson.

D That's right. Could get --

P Get Mitchell. Maybe. No.

H Hunt can't get Mitchell.

D I don't think Hunt can get Mitchell. Hunt's got a lot of hearsay.

P Ehrlichman?

D Krogh could go down in smoke.

P On the other hand -- Krogh says it is a national security matter. Is that what he says?

D Yeah, but that won't sell ultimately in a criminal situation. It may be mitigating on sentences but it won't, in the main matter.

P Seems we're going around the track. You have no choice on Hunt but to try to keep --

D Right now, we have no choice.

P But my point is, do you ever have any choice on Hunt? That is the point. No matter what we do here now, John, whatever he wants if he doesn't get it -- immunity, etc., he is going to blow the whistle.

D What I have been trying to conceive of is how we could lay out everything we know in a way that we have told the Grand

Jury or somebody else, so that if a Hunt blows, so what's new? It's already been told to a Grand Jury and they found no criminal liability and they investigated it in full.

We're sorry fellow -- And we don't, it doesn't --

P (Unintelligible) for another year.

D That's right.

P And Hunt would get off by telling them the Ellsberg thing.

D No Hunt would go to jail for that too -- he should understand that.

P That's a point too. I don't think I would throw that out. I don't think we need to go into everything. (adjective deleted) thing Hunt has done.

D No.

P Some of the things in the national security area. Yes.

H Whoever said that anyway. We laid the groundwork for that.

P But here is the point, John. Let's go the other angle, is to decide if you open up the Grand Jury: first, it won't be any good, it won't be believed. And then you will have two things going: the Grand Jury and the other things, committee, etc. The Grand Jury appeals to me from the standpoint, the President makes the move. All these charges being bandied about, etc., the best thing to do is that I have asked the Grand Jury to look into any further charges. All charges have been raised. That is the place to do it, and not before a

20. At the March 21, 1973, meeting the President after considering several options seized on the possibility of calling a new grand jury, thereby delaying Hunt's sentencing and making the immediate payment unnecessary as a means of buying time. Not once after this option was explored was there any suggestion that Hunt's demand be met.

The concluding page of the transcript of the March 21, 1973, morning meeting clearly demonstrates that the President recognizes that any blackmail and cover-up activities then in progress could not continue.

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20a Transcript, March 21, 1973, 10:12-11:55 a.m., pp. 245-246.....	158
20b Transcript, March 21, 1973, 10:12-11:55 a.m., p. 249.....	160

NOTE: Objection has been raised by Congresswoman Holtzman and Congressman Seiberling as to whole statement being a conclusion rather than a statement of information within the Rules of Procedure of the Committee.

without a transcript.

D What we need also, Sir

H But John's view is if we make the public statement that we talked about this morning, the thing we talked about last night -- each of us in our hotel, he says that will immediately lead to a Grand Jury.

P Fine -- alright, fine.

H As soon as we make that statement, they will have to call a Grand Jury.

P They may even make a public statement before the Grand Jury, in order to --

So it looks like we are trying to do it over.

D Here are public statements, and we want full Grand Jury investigations by the U.S. Attorneys office.

P If we said that the reason we had delayed this is until after the sentencing -- You see that the point is that the reason time is of the essence, we can't play around on this. If they are going to sentence on Friday, we are going to have to move on the (expletive deleted) thing pretty fast. See what I mean?

D That's right.

P So we really have a time problem.

D The other thing is that The Attorney General could call Sirica, and say that, "The government has some major

developments that it is considering. Would you hold sentencing for two weeks?" If we set ourselves on a course of action.

P Yep, yep.

D See, the sentencing may be in the wrong perspective right now. I don't know for certain, but I just think there are some things that I am not at liberty to discuss with you, but I want to ask that the Court withhold two weeks sentencing.

H So then the story is out: "Sirica delays sentencing Watergate" --

D I think that could be handled in a way between Sirica and Kleindienst that it would not get out. Kleindienst apparently does have good rapport with Sirica. He has never talked since this case developed, but ---

P That's helpful. So Kleindienst should say that he is working on something and would like to have a week. I wouldn't take two weeks. I would take a week.

D I will tell you the person that I feel we could use his counsel on this, because he understands the criminal process better than anybody over here does.

P Petersen?

D Yes, Petersen. It is awkward for Petersen. He is the head of the criminal division. But to discuss some of things with him, we may well want to remove him from the head of

- H We should change that a little bit. John's point is exactly right. The erosion here now is going to you, and that is the thing that we have to turn off at whatever cost. We have to turn it off at the lowest cost we can, but at whatever cost it takes.
- D That's what we have to do.
- P Well, the erosion is inevitably going to come here, apart from anything and all the people saying well the Watergate isn't a major issue. It isn't. But it will be. It's bound to. (Unintelligible) has to go out. Delaying, is the great danger to the White House area. We don't, I say that the White House can't do it. Right?
- Yes, Sir.

21. Neither of the participants of the March 21, 1973, morning meeting came away with any opinion that the President authorized payments to Hunt. Haldeman concluded that the President rejected payments to Hunt. Dean testified: "The money matter was left very much hanging at the meeting. Nothing was resolved."

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21a Transcript, April 17, 1973, 12:35-2:20 p.m. p. 1034.....	162
21b Dean 4 SSC, 1423.....	163

H Could very well be. John, I can't believe, is a basically dishonorable guy. I think there's no question that John is a strong self-promoter, self-motivated guy for his own good; but --

P But in that conversation I was -- we were -- I was -- I said, "Well for (expletive removed), let's --"

H You explored in that conversation the possibility of whether such kinds of money could be raised. You said, "Well, we ought to be able to raise --"

P That's right.

H "How much money is involved?" and he said, "Well it could be a million dollars." You said, "That's ridiculous. You can't say a million. Maybe you say a million, it may be 2 or 10, and 11"

P But then we got into the blackmail.

H You said, "Once you start down the path with blackmail it's constant escalation."

P Yep. That's my only conversation with regard to that.

H They could jump and then say, "Yes, well that was morally wrong. What you should have said is that blackmail is wrong not that it's too costly."

P Oh, well that point (inaudible) investigation --

H (inaudible)

P You see my point? We were then in the business of -- this was one of Dean's -- when he was -- was it after that we sent him to Camp David?

1423

Senator INOUE. "On March 20th the President indicated that he still did not have all the facts."

Mr. DEAN. What date was that, Senator?

Senator INOUE. March 20.

Mr. DEAN. The President did not state to me, on the 20th when I received a call from the President I told him at that time that I would like to meet with him the next morning, and I would like to tell him what I thought the implication of the situation was, what had really prompted me at that time was the new demand from Mr. Hunt that indeed, this thing was getting far out of hand, that the White House was now being directly subject to blackmail and I did not know how to handle it.

Senator INOUE. Is it your testimony that on March 20 the President did in fact have all the facts?

Mr. DEAN. I did not hear you, again, Senator, I am sorry.

Senator INOUE. Is it your testimony that on March 20 the President did not have all the facts?

Mr. DEAN. I do not know what the President knew on March 20. We had had conversations before that. We had conversations that I was personally engaged in on September 15 of the preceding year. We had had conversations in early February or late February in which I tried to start telling him some of my own involvement. We had also had a discussion on March 13 about the money demands that were being made. At that time he discussed the fact that a million dollars is no problem. He repeated it several times. I can very vividly recall that the way he sort of rolled his chair back from his desk and leaned over to Mr. Haldeman and said, "A million dollars is no problem," and then he came back and asked "Well, who is making these demands," and I said they are principally coming from Mr. Hunt and he got into the fact that Hunt had been given clemency and his conversation about his annoyance that he had also talked to Colson about this in addition to Ehrlichman, and the money matter was left very much hanging at that meeting. Nothing was resolved.

Senator INOUE. As the President's counsel, did you, in a very legal fashion, advise him of your meetings in February in the Attorney General's office?

Mr. DEAN. My channel of reporting was through Mr. Haldeman or Mr. Ehrlichman. At the completion of the second meeting I sought out an appointment with Mr. Haldeman. I recall—

Senator INOUE. In the subsequent meetings with the President did you clearly advise him of the break-in, your involvement and the cover-up, and your involvement?

Mr. DEAN. I certainly did on the 21st and I had attempted to do it earlier in February but he was not interested in it when I raised it, and the conversation got cut short. I told him I thought I had an obstruction-of-justice problem and gave him, started to give him the highlights. He did not want to pursue it further.

Senator INOUE. "In the preceding week Dean had begun to express to Richard Moore concern about Dean's own involvement. Referring to the meetings in Mitchell's office, the plumbers operation and the Ellsberg break-in and the demands by Hunt possibly on March 16 for more money."

22. At the March 21, 1973, morning meeting while discussing the practicality of getting another grand jury the President told Dean and Haldeman to get Mitchell to come to Washington, so that Mitchell could meet with Haldeman, Ehrlichman and Dean.

22a Transcript, March 21, 1973, 10:12-11:55 a.m.,
pp. 247-248.

the Criminal Division and say, "That related to this case, you will have no relation." Give him some special assignment over here where he could sit down and say, "Yes, this is an obstruction, but it couldn't be proved," so on and so forth. We almost need him out of there to take his counsel. I don't think he would want that, but he is the most knowledgeable.

P How could we get him out?

D I think an appeal directly to Henry --

P Why couldn't the President call him in as Special Counsel to the White House for the purpose of conducting an investigation. Rather than a Dean in office, having him the Special Counsel to represent us before the Grand Jury.

D I have thought of that. That is one possibility.

H On the basis that Dean has now become a principal, rather than a Counsel.

D I could recommend that to you.

H Petersen is planning to leave, anyway.

D Is he?

P You could recommend it and he could come over and I would say, "Now Petersen, we want you to get to the bottom of the damn thing. Call another Grand Jury or anything else. Correct? Well, now you gotta know whether Kleindienst can get Sirica to hold off. Right? Second, you have to get Mitchell down

here. And you and Ehrlichman and Mitchell by tomorrow.

H Why don't we do that tonight?

P I don't think you can get Mitchell that soon, can you?

H John?

P It would be helpful if you could.

D It would be better if he could come down this afternoon

P It would be very helpful to get going. Actually, I am perfectly willing to meet with the group. I don't know whether I should.

H Do you think you want to?

P Or maybe have Dean report to me at the end. See what conclusions you have reached. I think I need to stay away from the Mitchell subject at this point, do you agree?

D Uh, huh.

D Unless we see, you know, some sort of a reluctant dragon there.

H You might meet with the rest of us, but I am not sure you would want to meet with John in this group at this time.

P Alright. Fine. And my point is that I think it is good, frankly, to consider these various options. And then, once you decide on the right plan, you say, "John," you say, "No doubts about the right plan before the election. You handled it just right. You contained it. And now after the election we have, to have another plan. Because we can't for four years have this thing eating away." We can't do it.

23. Haldeman and Dean left the meeting with the President at approximately 11:55 a.m. on March 21, 1973. Pursuant to the President's request Haldeman called Mitchell at approximately 12:30 p.m. and requested Mitchell come to Washington. Dean's testimony confirms this.

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23a Haldeman's Telephone Log.....	170
23b Haldeman, Watergate Grand Jury Testimony. January 30, 1974, p. 4-7.....	172
23c Dean 3 SSC, 1000.....	176

Wednesday

WASHINGTON

TELEPHONE MEMORANDUM



H. R. Halderman

March 21, 1973

	TIME		NAME	ACTION
	PLACED	DISC		
OUT	8:05 AM		Mrs. Halderman	✓
INC	8:05 PM			
OUT	8:40 AM		John Dean	✓
INC	8:40 PM			
OUT	9:25 AM		Dave Parker	✓
INC	9:25 PM			
OUT	9:40 AM		#G 516/824-9278 Bern Workman	✓
INC	9:40 PM			
OUT	10:15 AM		Steve Bue	✓
INC	10:15 PM			
OUT	10:50 AM		Gen. Scowcroft	✓
INC	10:50 PM			
OUT	11:04 AM		Ron Ziegler	✓
INC	11:04 PM			
OUT	11:50 AM		John Ehrlich	✓
INC	11:50 PM			
OUT	12:30 AM		John Mitchell	✓
INC	12:30 PM			
OUT	1:30 AM		John Dean	✓
INC	1:30 PM			
OUT	2:00 AM		Al Smith	✓
INC	2:00 PM			

Box 2

Wednesday

A. R. Waldman

March 21

, 19 23

U.S. GOVERNMENT PRINTING OFFICE: 1975-O-375-347

1 A I understand.

2 Q Do you understand that while the Grand Jury rules do
3 not permit you to have an attorney present in this room, you
4 may be excused to consult with an attorney outside of this
5 room at any time upon request to the Foreman of the Grand Jury.

6 A I understand.

7 Q For the record, you are represented today by counsel
8 in the presence of Mr. Wilson and Mr. Strickler who are
9 outside, is that correct?

10 A That is correct.

11 Q So that anything you do say should be said freely
12 and voluntarily. Do you understand that?

13 A Yes.

14 Q And you understand further, as in the past, the
15 fact that you have been advised that you are a potential
16 target of this Grand Jury's investigation which means that
17 you may well be considered as a defendant for purposes of
18 indictment by this Grand Jury.

19 A I understand.

20 Q Now understanding all of those facts and rights which
21 you possess, are you prepared to testify this morning?

22 A I am.

23 Q Mr. Haldeman, may I direct your attention to the
24 21st day of March, 1973 and ask whether you recall meeting on
25 that day with the President and John Dean who was at that time

2 A Yes, I do.

3 Q And you recall entering a meeting which was then in
4 progress?

5 A That's correct, yes.

6 Q Now following that meeting did there come a time
7 when you had a conversation with John Mitchell who was then in
8 New York City on the telephone?

9 A Yes, I am sure there did. Let's see -- March 21st?
10 Yes.

11 Q Can you give us the best of your recollection of the
12 time of the telephone conversation and the substance of it?

13 A I don't have -- I should qualify my previous answer.
14 I am sure that there was a telephone conversation because one
15 of the results or one of the outcomes of the March 21st meet-
16 ing with Mr. Dean and the President was a request by the
17 President that Mr. Dean, Mr. Ehrlichman, Mr. Mitchell and I
18 meet that day or the following day to discuss some of these
19 questions and then to report back to the President.

20 I feel sure that I called Mr. Mitchell to request his
21 coming down for such a meeting.

22 Q What do you recall of the conversation between your-
23 self and Mr. Mitchell?

24 A That's about all I recall. I am really assuming
25 that there was such a call. I think I called him. It is

possible that someone else called him. My general recollection now would be that I had called him and said that the President wanted us to meet and asked him to come down.

Q Is it not the case that you discussed with more particularity the problems about which the President suggested you meet in your conversation with Mr. Mitchell?

A Not that I recall, no.

Q Is it your testimony that you do not recall saying to Mr. Mitchell in substance that the President requested that you meet as to how to deal with Mr. Hunt's demand for substantial cash payments?

A Yes. I have no recollection of that being discussed.

Q It is your testimony that -- is it your testimony that in the telephone conversation with Mr. Mitchell you did not allude in any way to the subject matter about which you would be meeting the following day?

A My recollection is that the subject matter about which we would be meeting was the general subject of how to deal with the overall -- what has now become called the Watergate situation, as it stood at that time.

I don't recall the point that you raised as being the specific subject for the meeting.

Q I'm sorry but your answer is not responsive to my question, most respectfully. I asked whether you did not recall alluding to the subject matter in your telephone

1 conversation with Mr. Mitchell.

2 A I don't recall alluding to the subject matter.
3 recollection would be that if I discussed the subject matter
4 it would be in the context that I have just described. The
5 purpose of the meeting was, as I recall it, to review the
6 Watergate situation.

7 Q Is it not a fact, Mr. Haldean, that in your tele
8 phone conversation with Mr. Mitchell you stated to him in
9 substance, or you asked him in substance, whether he was going
10 to take care of Mr. Hunt's problem?

11 A I don't recall any such discussion, no.

12 Q When you say you do not recall any such discussion
13 that would be something you would recall, would it not, if you
14 had such a discussion?

15 A I would think so but I don't see that as having been
16 the major point of discussion either at the time of the phone
17 call to set up the meeting or at the meeting which took place
18 on the 22nd.

19 Q You're talking now again about Mr. Hunt's specific
20 request, is that correct?

21 A Yes.

22 Q When were you first advised that Hunt was making
23 such a request or demand?

24 A To the best of my recollection, the first I knew of
25 that was when it was raised in the March 21st meeting when it

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the President suggested that we have a meeting with Mitchell, Haldeman, and Ehrlichman to discuss how to deal with this situation. What emerged from that discussion after Haldeman came into the office was that John Mitchell should account for himself for the pre-June 17 activities and the President did not seem concerned about the activities which had occurred after June 17.

After I departed the President's office, I subsequently went to a meeting with Haldeman and Ehrlichman to discuss the matter further. The sum and substance of that discussion was that the way to handle this now was for Mitchell to step forward and if Mitchell were to step forward we might not be confronted with the activities of those involved in the White House in the coverup.

Accordingly, Haldeman, as I recall, called Mitchell and asked him to come down the next day for a meeting with the President on the Watergate matter.

In the late afternoon of March 21, Haldeman and Ehrlichman and I had a second meeting with the President. Before entering this meeting I had a brief discussion in the President's outer office of the Executive Office Building suite with Haldeman in which I told him that we had two options:

One is that this thing goes all the way and deals with both the pre-activities and the postactivities, or the second alternative; if the coverup was to proceed we would have to draw the wagons in a circle around the White House and that the White House protect itself. I told Haldeman that it had been the White House's assistance to the reelection committee that had gotten us into much of this problem and now the only hope would be to protect ourselves from further involvement.

The meeting with the President that afternoon with Haldeman, Ehrlichman, and myself was a tremendous disappointment to me because it was quite clear that the coverup as far as the White House was concerned was going to continue. I recall that while Haldeman, Ehrlichman, and I were sitting at a small table in front of the President in his Executive Office Building office that I for the first time said in front of the President that I thought that Haldeman, Ehrlichman, and Dean were all indictable for obstruction of justice and that was the reason I disagreed with all that was being discussed at that point in time.

I could tell that both Haldeman, and particularly Ehrlichman, were very unhappy with my comments. I had let them very clearly know that I was not going to participate in the matter any further and that I thought it was time that everybody start thinking about telling the truth.

I again repeated to them I did not think it was possible to perpetuate the coverup and the important thing now was to get the President out in front.

MEETING OF MARCH 22

The arrangements had been made to have a meeting after lunch with the President with Ehrlichman, Haldeman, Mitchell, and myself. Mr. Mitchell came to Washington that morning for a meeting in Haldeman's office in which Ehrlichman, Mitchell, Haldeman, and

24. On March 21, 1973 Dean had a telephone conversation with LaRue concerning Hunt's request for money and Dean suggested LaRue call Mitchell. LaRue called Mitchell in the early afternoon of March 21, 1973 and advised Mitchell that he had a request for \$75,000 for Hunt's legal fees. Mitchell acknowledges that he advised LaRue to pay the money for attorney fees. During the March 21, 1973 late afternoon meeting with the President, Dean denied that he had spoken to either LaRue or Mitchell, when in fact he had spoken to both.

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Q Now, did Mr. Holt call, at that time, according to you, one way or another, whether Mr. Hunt would be paid?

A No, he did not.

Q Thereafter, did you have a conversation with Mr. LaRue?

A Yes, I did.

Q And what was the substance of that conversation?

A Mr. LaRue wanted to know what I was going to do about the problem that had raised, and I told him, nothing; that I was out of that business.

He then asked me what I thought he should do and I told him I thought he ought to talk to Mitchell about it.

Q Now, after the meeting on the 21st with the President and, for a portion, Mr. Haldeman, did you learn from anyone whether Mr. Mitchell had been contacted with respect to coming down to Washington and meeting with you and Mr. Haldeman and the President and Mr. Ehrlichman?

A Yes, I did.

Q And when did you learn that?

A Sometime on the 21st, I learned it from Mr. Haldeman. Originally, it had been hoped that Mr. Mitchell could come down immediately but, for some reason, he couldn't come down until the next morning. So a meeting was scheduled for the next morning.

Q Now, later on in the day, on the 21st, you had a

L. J. /

7

1 Bittman in the afternoon, do you recall whether that was a
telephone call in Mr. Bittman's office?

2 A That would certainly be my recollection so certainly
3 my assumption that the call would have been made through his
4 office, yes.

5 Q If it were not to his office, if he had left already
6 it would have been to his home, I take it?

7 A That would be true.

8 Q So you would place that at sometime in the latter
9 part of the afternoon or the early evening?

10 A The first call?

11 Q Yes.

12 A I would place it in the afternoon.

13 Q Now prior to making that call, I take it you had had
14 discussions with other people concerning whether to make this
15 delivery.

16 A That is correct.

17 Q That day had you spoken to Mr. Dean and Mr. Mitchell?

18 A That is correct.

19 Q Now starting with Mr. Dean, can you tell us what Mr.
20 Dean told you in substance?

21 A My best recollection of that phone call is that Mr.
22 Dean called me. He stated that he had had a request for a
23 delivery of money to Mr. Bittman for Mr. Hunt's attorneys fees
24 and for Mr. Hunt's expenses, living expenses.
25

1 Q Okay.

2 A He indicated to me that he was passing this infor-
3 tion on to me for whatever purpose I wanted to make of it,
4 that he was not going to have any further involvement, contact
5 in the delivery of monies to the so-called Watergate defendants
6 and that I would have to exercise my own judgment to decide
7 what to do about this request.

8 I told Mr. Dean that unless I was authorized by
9 someone that I would not make this delivery, at which point
10 he suggested that I call Mr. Mitchell.

11 Q Did Mr. Dean in that conversation indicate that there
12 was a sense of urgency about this?

13 A Yes. I recall that he indicated there was a sense
14 of urgency. To the best of my recollection he mentioned some-
15 thing to the effect that Mr. Hunt was due to be sentenced, I
16 think within the next two or three days, and he did imply a
17 sense of urgency about it, yes.

18 Q I take it Mr. Dean identified an amount of money in
19 the course of that conversation that Mr. Hunt was asking for?

20 A That is correct. My recollection is that there was
21 \$75,000 required for attorneys fees, and \$60,000 required for
22 his living expenses.

23 Q Now I take it you had a conversation with Mr.
24 Mitchell following that with Mr. Dean.

25 A That is correct.

1 Q Can you recall to the best of your recollection the
2 substance of that conversation?

3 A As it relates to the delivery of this money, I can,
4 yes. I told Mr. Mitchell of my conversation with John Dean,
5 indicating that Dean was not going to be involved any further
6 in the authorization and distribution of money.

7 I told Mr. Mitchell that we had had a request for
8 \$75,000 for Mr. Hunt. He asked me what it was for. I told
9 him to the best of my knowledge it was for attorney's fees,
10 and he said that under the circumstances, he said, "I think
11 you ought to pay it", which I proceeded to do.

12 Q Is it a fact then that you didn't mention to Mr.
13 Mitchell the request for \$60,000?--

14 A This is my best recollection --

15 Q Mr. LaRue, let me finish the question. \$60,000
16 for maintenance.

17 A To the best of my recollection this is true. I
18 think this was a decision I made myself. It was certainly
19 a rather large sum of money involved, quite frankly approach-
20 ing the amount of money which I had on hand at that time.

21 The only amount of money I recall discussing with
22 Mr. Mitchell was the \$75,000 which was delivered.

23 Q Was there anything in the conversation you had with
24 Mr. Mitchell by which Mr. Mitchell indicated that he had or
25 had not heard of this request earlier than the time of your recollection?

1 conversation?

2 A Nothing that would indicate to me one way or the
3 other.

4 Q Now in fixing the date of these events, do you
5 recall that the date following this delivery of money you
6 learned that Mr. Mitchell was in Washington?

7 A I don't specifically recall Mr. Mitchell being in
8 Washington on that particular day. I do recall him being in
9 Washington a couple of times in this time frame, but as far
10 as the specific date, I can't recall.

11 Q Now independently do you have any recollection of
12 the precise date of the request to Mr. Millican to deliver
13 the funds?

14 A The precise date of the request?

15 Q Yes.

16 A The date would be on the day he delivered it. It
17 would have been that specific day.

18 Q I mean can you recall of your own recollection, or
19 through any of your own notes, what day this was? We know it
20 was in late March from your recollecting the events, but
21 specifically can you recall the precise day?

22 A I can't specifically recall the precise day. No,
23 sir.

24 Q All you can be sure of is that it was the evening
25 of the dinner party with Mr. Unger?

1630

Mr. MITCHELL. Yes, sir.

Mr. DASH. Now, when did you leave your position as the director of the campaign?

Mr. MITCHELL. On the 1st of July 1972.

Mr. DASH. And when you left, you were aware, were you not, that Mr. Magruder was staying on as deputy director of the campaign.

Mr. MITCHELL. Yes, he stayed on as Mr. MacGregor's deputy.

Mr. DASH. And were you not aware when you were leaving that Mr. Magruder at least faced some serious problem of being indicted on the break-in of the Democratic National Committee headquarters as of July 1?

Mr. MITCHELL. As of July 1? I think that was a potential, yes.

Mr. DASH. Now, you did meet with the President on June 30, 1972, just before you left. As I understand, you had lunch with the President.

Mr. MITCHELL. That is correct, sir.

Mr. DASH. Did you think it your duty to tell the President at that lunch before you left that the man who was playing such a key role in his campaign, Magruder, had such a problem that he might be indicted for the break-in of the Democratic National Committee headquarters?

Mr. MITCHELL. Mr. Dash, I think you and I have gone over to the point where we have established that the White House horror stories had come out in connection with the problem at that particular time and there wasn't the question of lifting of the tent slightly in order to get with respect to one individual or another; it was a keeping the lid on and no information volunteered.

Mr. DASH. Even if the lid had been kept on the so-called White House horrors, wouldn't it be very embarrassing to the President of the United States in his effort to be reelected if his deputy campaign director was indicted in the break-in of the Democratic National Committee headquarters?

Mr. MITCHELL. I don't think as far as the Watergate was concerned, there was a hell of a lot of difference between the deputy campaign director and the counsel for the finance committee and the security officer. Quite frankly, as far as the Watergate was concerned, that was already a public issue. It was the parties that were involved.

Mr. DASH. There came a time, did there not, Mr. Mitchell, that the pressures for money by the defendants or by Mr. Hunt increased?

Would you tell us what you know about that?

Mr. MITCHELL. Well, I am not sure, Mr. Dash, that I can tell you very much about them other than the fact that somewhere along in the fall, Mr. Hunt had a telephone conversation with Mr. Colson, which, I think, covered the subject matter and then later on, as I recall, Mr. Dean has got in the record a letter from Mr. Hunt to Mr. Colson, which I think is quite suggestive of the fact that he was being abandoned.

Then I heard later on, in March of this year, there were oral communications from either Hunt or his attorney relating to requests for legal fees and so forth, which were communicated to the White House.

Mr. DASH. How did you hear about the March request?

Mr. MITCHELL. The March request? I think I probably heard about it through Mr. LaRue, if my memory serves me right.

Mr. DASH. Do you know how much money was actually being requested at that time?

1631

Mr. MITCHELL. I can't really tell you about the moneys across this period of time. It seems to me that the March request had some amount in the area of \$75,000 which Mr. LaRue described to me, that was being requested by counsel for their legal fees in connection with the representation of Mr. Hunt.

Mr. DASH. Did Mr. LaRue ask you what your opinion was or whether he should pay that amount of money to Mr. Hunt or his counsel?

Mr. MITCHELL. Mr. LaRue, to the best of my recollection, put it in this context: I have got this request, I have talked to John Dean over at the White House, they are not in the money business any more, what would you do if you were in my shoes and knowing that he made prior payments? I said, if I were you, I would continue and I would make the payment.

Mr. DASH. And in that advice to Mr. LaRue, I take it, was the consideration that unless that payment was made, Mr. Hunt might in fact uncover the so-called White House horror stories.

Mr. MITCHELL. Mr. Dash, I don't know how you can move from the fact that Mr. LaRue told me that it was for legal fees to the point where we are uncovering the White House horror stories. It may be there, I don't know.

Mr. DASH. Didn't that enter your mind, the pressure from Mr. Hunt, the fact that you indicated there were requests and former pressures for money, to the-----

Mr. MITCHELL. I don't think, Mr. Dash, that in March of 1973, those things were entering my mind, because I think as you are well aware from other testimony, I had refused to even consider raising money for these purposes a long time before that.

Mr. DASH. But you are aware that there was a sum of money available for that at the White House, were you not?

Mr. MITCHELL. I was aware that there had been one at one time, but I didn't know how far Liddy had gotten into that particular fund.

Mr. DASH. Since the \$350,000 had come over from the Committee for the Re-Election of the President to the White House-----

Mr. MITCHELL. That is the only fund I was aware of, yes.

Mr. DASH. Why, Mr. Mitchell, did you refuse around that time to raise any money for the payment of these fees?

Mr. MITCHELL. Well, not only around that time, but all other times. I have never raised any money for anything and I was not about to start for that particular purpose.

Mr. DASH. Did you ever make any suggestions that the money that should be used for that purpose was the \$350,000?

Mr. MITCHELL. No, to the best of my recollection, I had a conversation with Mr. LaRue, I am sure at his instance, not mine, in which he pointed out that the funds, whatever source they were, that he had for the support of and the payment of lawyers' fees of these individuals, had run out, did I know whether there was any other money? And I suggested that maybe you ought to call over to the White House and see if the \$350,000 that had been sitting over there since April was available for the purpose. I understand that he did so.

Mr. DASH. Do you recall attending a meeting in January with Mr. Kalmbach and Mr. Dean in which you asked Mr. Kalmbach to help raise money for these legal fees and support of families? That occurred in January 1973.

P However, can he, by talking, get a pardon? Clemency from the Court?

D Obviously he has thought of this. If he goes in there and tells this Judge before sentencing, if he says, "Your honor I am willing to tell all. I don't want to go to jail. I plead guilty to an offense. If I don't have to go to jail, I will cooperate with you and the government. I will tell you everything I know." I think that probably he would receive very favorable consideration.

P Yeah. And then so the point we have to, the bridge we have to cross there, that you have to cross I understand quite soon, is what you do about Hunt and his present finance? What do we do about that?

D Well apparently Mitchell and LaRue are now aware of it so they know how he is feeling.

P True. Are they going to do something?

D Well, I have not talked with either of them. Their positions are sympathetic.

P Well, it is a long road isn't it? When you look back on it, as John has pointed out here, it really has been a long road for all of you, of us.

H It sure is.

P For all of us, for all of us. That's why you are wrestling with the idea of moving in another direction.

D That's right. It is not only that group, but within this circle of people, that have tidbits of knowledge, there

25. Having received information on March 21, 1973 of possible obstruction of justice having taken place following the break-in of the DNC, the President promptly undertook an investigation into the facts. The record discloses that the President started his investigation the night of his meeting with Dean on March 21st, as confirmed by Dean in his conversation with the President on April 16, 1973. At the meeting with Mitchell and the others on the afternoon of March 22nd, the President instructed Dean to prepare a written report of his earlier oral disclosures.

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P But I did ask you and I think you should say the President 801
authorized me to say this -- I won't reveal the conversation
with the President -- he asked me this question. I told
him this, that nobody in the White House was involved. And
in addition to that to the best of my ability I kept, I guess,
or how do you think you should handle this Presidential
advice? Maybe you better --

D Well, I think the less said about you, I think you say any-
thing you want to say anything about it.

P Well, let me tell you I am going to handle that properly
and I just wanted to be sure that it jives with the facts.
I can say that you did tell me that nobody in the White
House was involved and I can say that you then came in, at
your request, and said, "I think the President needs to hear
more about this case."

D That's right.

P Then it was that night that I started my investigation.

D That's right -- that was the Wednesday before they were
sentenced. Now I can get that date --

P Would you do this. Get your chronology of this. Wednesday
you came in and told me that, et cetera. That would be
helpful for me to have. That is when I frankly became
interested in the case and I said, "Now (expletive omitted)
I want to find out the score." And set in motion
Ehrlichman, Mitchell and -- not Mitchell but a few others.
OK?

D Sure.

(inaudible) (two memorandum that the courts have public records)

P We tried that move, John --

M Well, I did too -- before Mr. President. But now that the indictment has come out (inaudible) has the feeling that they have the documentation back of it. Now that the bag has come out.

D I think the proof is in the pudding, so to speak -- it is how this document is written and until I sit down and write that document. I have done part of it so to speak. I have done the Segretti thing and I am relatively satisfied that we don't have any major problems there. As I go to part A -- to the Watergate -- I haven't written -- I haven't gone through the exercise yet in a real effort to write such a report, and I really can't say until I do it where we are and I certainly think it is something that should be done though.

P What do you say on the Watergate (inaudible)

D We can't be complete if we don't know, all we know is what, is what --

P It is a negative in setting forth general information involving questions. Your consideration -- your analysis, et cetera. You have found this, that. Rather than going into every news story and every charge, et cetera, et cetera. This, this this, -- put it down -- I don't know but

D I don't think I can do it until I sit down this evening and start drafting.

H I think you ought to hold up for the weekend and do that and

get it done.

P Sure

H Give it your full attention and get it done.

P I think you need -- why don't you do this? Why don't you go up to Camp David?

D I might do it, I might do it.

P Completely away from the phone. Just go up there and (inaudible) I want a written report.

E That would be my scenario. He presents it to you at your request. You then publish -- (inaudible)

T I know that but I don't care.

You are not dealing with the defendants on trial. You are only dealing with White House involvement. You are not dealing with the campaign.

D That's where I personally...

P You could write it in a way that you say this report was not comment on et cetera, et cetera, but, "I have reviewed the record, Mr. President and without at all compromising the right of defendants and so forth, some of whom are on appeal, here are the facts with regard to members of the White House staff et cetera, et cetera, that you have asked me about. I have checked the FBI records; I have read the Grand Jury transcripts -- et cetera, et cetera.

11 As a matter of fact you could say, "I will not summarize some of the FBI reports on this stuff because it is my understanding that you may wish to publish this." Or you

P Do you think we want to go this route now? Let it hang out so to speak?

D Well, it isn't really that --

H It's a limited hang out.

D It is a limited hang out. It's not an absolute hang out.

P But some of the questions look big hanging out publicly or privately.

D What it is doing, Mr. President, is getting you up above and away from it. That is the most important thing.

P Oh, I know. I suggested that the other day and they all came down negative on it. Now what has changed their minds?

D Lack of candidate or a body.

H Laughter.

M (Inaudible) We went down every alley.

P I feel that at a very minimum we've got to have this statement. Let's look at it. I don't know what it -- where in the hell is it -- If it opens up doors, it opens up doors -- you know.

H John says he is sorry he sent those burglars in there -- and that helps a lot.

P That's right.

E You are very welcome, sir.

(Laughter)

H Just glad the others didn't get caught.

P Yeah, the ones he sent to Muskie and all the rest; Jackson;

26. Although Dean was instructed to go to Camp David and write a report on March 22, 1973 by the President, Dean denied this and later testified before the Senate Select Committee that he was never requested to write a report until Haldeman called him after he arrived at Camp David.

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Mr. DEAN. Well, the President called me on the 23d. In the meeting on the 22d—I might mention this: As early as February, when I had a meeting with the President, he asked me had I ever spent any time up at Camp David? I said no, I hadn't, I had been up there to a meeting once right after the election, a very brief meeting with Ehrlichman and Haldeman. He said, you and your wife ought to go up there on some weekend, it is an excellent place to go. He mentioned that on a number of occasions and I told my wife, I said, the President has been very gracious in saying that you should go to Camp David and mentioned it to her.

Senator GURNER. At any rate, you did go to Camp David, sort of understanding that you were going to write a report about Watergate, is that right?

Mr. DEAN. No, sir. When the President talked to me on the 23d, I had talked to O'Brien that morning about the fact that in court, Mr. McCord's letter had been read by Judge Sirica. O'Brien reported from somebody who had told him at the courthouse.

I called Ehrlichman, and Ehrlichman said he had a copy of the letter and read me a copy of the letter and asked me what my assessment of it was. Based on my conversation with O'Brien, I told him that it seemed at best that all McCord has is hearsay.

It was then much later. It was, oh, in the afternoon, I guess, 1 or 2 o'clock or so. I was still surrounded by the press at home because of the Gray statement the preceding day; they wanted me to make a comment on it, and I didn't want to do that. I received a call from the President.

There are some details of that conversation of a personal nature to the President that, the first family, that I don't want to put in because they are not relevant. But I recall the conversation very clearly, because there were some complications because Mrs. Nixon and Tricia were up there at the same time.

The President said, "Well, go on ahead. You need the break, you have been under a lot of pressure," and the like. He never at any time asked me to write a report, and it wasn't until after I had arrived at Camp David that I received a call from Haldeman asking me to write the report up.

If I was going to go up and write a report, I would have gone to my—there was general discussion also of preparing a Segretti report, as I recall. If I had gone to Camp David specifically to write a report, I would have gone to my office first and collected an awful lot of material that I didn't take with me, which I subsequently had to call back for in order to write a report.

Senator GURNER. It was shortly after this, though, that then you engaged counsel, is that correct?

Mr. DEAN. On the evening—I believe it was Sunday evening, I received word that the Los Angeles Times was going to publish a story that I had had prior knowledge of the fact that there was going to be a break-in of the Democratic National Committee headquarters on June 17.

Now, I knew I hadn't had prior knowledge of that. In fact, I don't think anybody other than those involved had prior knowledge of the fact that there was going to be a break-in. I thought it was libelous.

I called Mr. Hogan, told him, explained in generalities the facts.

27. Just six days after Dean's disclosures, on March 27, 1973, the President met with Ehrlichman and Haldeman to discuss the evidence thus far developed and how best to proceed. Again the President stated his resolve that White House officials should appear before the grand jury. They confirmed to the President, as Dean had, that no one at the White House had prior knowledge of the Watergate break-in. Ehrlichman told the President that there wasn't "a scintilla of a hint" that Dean knew about this." The President asked about the possibility of Colson having prior knowledge and Ehrlichman stated that Colson's response was "of total surprise... He was totally non-plussed, as the rest of us."

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P before any judicial group, therefore, is on a different basis from anybody else, "which is basically what I - you know when I flatly said Dean would not appear but others would. You know, I did say that, and of course --

E It was on a different basis. And at the same time, a man in any position ought to be given a chance to defend himself from these groundless charges.

P "Mr. Dean certainly wants the opportunity to defend himself against these charges. He would welcome the opportunity and what we have to do is to work out a procedure which will allow him to do so consistent with his unique position of being a top member of the President's staff but also the Counsel. There is a lawyer, Counsel -- not lawyer, Counsel -- but the responsibility of the Counsel for confidentiality."

Z Could you apply that to the Grand Jury?

E Absolutely. The Grand Jury is one of those occasions where a man in his situation can defend himself.

P Yes. The Grand Jury. Actually if called, we are not going to refuse for anybody called before the Grand Jury to go, are we, John?

E I can't imagine (unintelligible)

P Well, if called, he will be cooperative, consistent with his responsibilities as Counsel. How do we say that?

P I would -- the reason I would totally agree -- that I would believe Dean there (unintelligible) he would be lying to us about that. But I would believe for another reason -- that he thought it was a stupid damn idea.

E There just isn't a scintilla of hint that Dean knew about this.

Dean was pretty good all through that period of time in sharing things, and he was tracking with a number of us on --

P Well you know the thing the reason that (unintelligible) thought -- and this incidentally covers Colson -- and I don't know whether --. I know that most everybody except Bob, and perhaps you, think Colson knew all about it. But I was talking to Colson, remember exclusively about -- and maybe that was the point -- exclusively about issues. You know, how are we going to do this and that and the other thing. (unintelligible) mainly, the labor bill, how do we get this, how do we get aid to the Catholic schools.

H Getting that aid to Catholic schools, you know, was a -- Colson's fight was with (unintelligible).

P Right, That was what it is. But in all those talks he had plenty of opportunity. He was always coming to me with ideas, but Colson in that entire period, John, didn't mention it. I think he would have said, "Look we've gotten some information," but he

there had been this burglary - the first guy I called was Colson.

P Yeah.

E And his response, as I recall it, was one of total surprise and he could have said then, "Oh, those jerks, they shouldn't have; Or, "I knew about it earlier"; Or, referred to it by saying, "It would have been a meaningful leak," but he didn't. He was totally nonplussed, the same as the rest of us.

P Well, the thing is too, that I know they talk about this business of Magruder's, saying that Haldeman had ordered, the President had ordered, etc., of all people who was surprised on the 17th of June -- I was in Florida -- was me. Were you there?

E No, I was here.

P Who was there?

E I called Colson, Haldeman and Ziegler and alerted them to this.

P And I read the paper. What in the name of (expletive removed) is this? I just couldn't believe it. So you know what I mean -- I believe in playing politics hard, but I am also smart. What I can't understand is how Mitchell would ever approve.

H That's the thing I can't understand here.

28. On April 8, 1973, the President met with Ehrlichman and Haldeman on board Air Force One and directed them to meet with Dean and urge him to go to the grand jury. Haldeman and Ehrlichman met with Dean that afternoon and at 7:33 p.m. Ehrlichman reported to the President that Dean indicated he would agree to go before the grand jury.

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28b Transcript, April 8, 1973, 7:33-7:37 p.m., p. 401..	201

Senator GURNEY. Now, through this period of time, beginning with that assignment on—is it March 31?

Mr. EHRLICHMAN. Thirtieth.

Senator GURNEY. March 30, were you reporting to the President what you were finding out?

Mr. EHRLICHMAN. I reported to him after I talked with Mr. O'Brien, but very briefly on that subject, and I just said: "I am beginning to get a feel for this thing but I have got so much hearsay here I don't think it's worth taking a lot of your time." He said: "You know, what are you finding out?" So I said: "Well he tells me there were these meetings back in the early times when Liddy had this plan, and so on." I took him kind of sketchily through the O'Brien business and I said: "This is hearsay two, three and in some cases four removed," and I said "We cannot move on something of this kind until we find out."

Now, in San Clemente again when we came to this funny conflict between Dean and Mitchell, I mentioned that to him, and I said "We are trying to get to the bottom of it," and two or three times he said "Have you got that figured out yet?" and when we talked on the airplane going back and we talked about Dean going to the grand jury and he said finally "I am not going to wait, he is going to go." He said: "Have you ever figured out what that is," and I said "No, we are going to see Dean. We don't know what that is."

Senator GURNEY. Well, now, did you make a complete report to the President?

Mr. EHRLICHMAN. Yes, sir.

Senator GURNEY. When was that?

Mr. EHRLICHMAN. That was on Saturday morning, April 14.

Senator GURNEY. What did you tell him?

Mr. EHRLICHMAN. Well, I told him basically a narrative of my interviews with these various people starting with O'Brien and running through everybody that is on this list except Mitchell and Magruder whom I had not yet—with whom I had not yet talked and Strachan the second time when I got into the whole question of Bob Haldeman's involvement.

Senator GURNEY. Now, so we can wrap this up and I can release the floor here, did you at that time give him a complete account of Watergate as we know it now, and if you did not, what portions did you not tell him that you didn't know? Perhaps we can get at it that way quickly.

Mr. EHRLICHMAN. Well, I didn't know, for instance, any of the behind-the-scenes business of the money beyond what Paul O'Brien had given me here and a little feel of it that Dean had given me which I think I have just described to you about as well as I can. The subsequent interviews that I had with particularly Magruder that afternoon—you see the outcome of this report to the President was, he said "I want you to talk to Magruder; I want you to talk to Mitchell," and then he also told me he wanted to find out more about Bob Haldeman's involvement. So those three followed that preliminary report and none of the things that I developed from any of them were included in it. When I completed them, then I came back and reported what those three individuals told me and laid that out for him.

Senator GURNEY. And was that a fairly complete account of Watergate?

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Appendix 13. Telephone conversation: The President and Ehrlichman, April 8, 1973. (7:33 - 7:37 a.m.)

P Oh, John. Hi.

E I just wanted to post you on the Dean meeting. It went fine. He is going to wait until after he'd had a chance to talk with Mitchell and to pass the word to Magruder through his lawyers that he is going to appear at the Grand Jury. His feeling is that Liddy has pulled the plug on Magruder, and that (unintelligible) he thinks he knows it now. And he says that there's no love lost there, and that that was Liddy's motive in communicating informally.

Uh, huh.

E At the same time, he said there isn't anything that he, Dean, knows or could say that would in any way harm John Mitchell.

P But, it would harm Magruder.

E Right. And his feeling is that Sirica would not listen to a plea of immunity at a (unintelligible) I should say. And that (unintelligible) from him. He would be much better off to go in there and have an informal talk and that's what he wants to do.

P Right.

E So obviously we didn't tell him not to, but we did say that it is important that the other people knew what he was doing.

29. Dean did in fact communicate his intention to testify before the grand jury to Mitchell and Magruder and told them he would not agree to support Magruder's previous testimony to the grand jury. Thereafter on April 14, 1973, Magruder appeared before the U. S. Attorneys and cooperated with them fully.

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that Mitchell and Magruder were waiting in another office for me. I asked him why they wanted to talk to me and he said that they wanted to talk to me about my knowledge of the meetings in Mitchell's office. I told Haldeman that they were both aware of the situation and I was not going to be if asked about those meetings. Haldeman said that he did not want to get into it, but I should go in and work it out with Mitchell and Magruder.

Before discussing the meetings with Mitchell and Magruder, I feel I should comment on my reaction to the discussion I had just had with Mr. Haldeman. Knowing how freely and openly he had discussed matters in the past, I could tell that he was back-peddling fast. That he was now in the process of uninvolving himself, but keeping others involved. This was a clear sign to me that Mr. Haldeman was not going to come forward and help end this problem, rather, he was beginning to protect his flanks. It was my reaction to this meeting with Mr. Haldeman and his evident changed attitude, and my earlier dealings with Ehrlichman where he had told me how I should handle various areas of my testimony should I be called before the grand jury, that made me decide not to turn over to them the report I had written at Camp David. I have submitted to the committee a copy of the Camp David report, part of which was typed by my secretary at Camp David and the remainder in longhand, which I had not put in final narrative form before I was called back to Washington.

[The document was marked exhibit No. 34-43.*]

MEETING WITH MR. MITCHELL AND MR. MAGRUDER

Mr. DEAN. After departing Mr. Haldeman's office, I went to meet with Mitchell and Magruder. After an exchange of pleasantries, they told me they wished to talk to me about how I would handle any testimonial appearances regarding the January 27 and February 4 meetings which had occurred in Mitchell's office. I told them that we had been through this before and they knew well my understanding of the facts as they had occurred at that time. Mitchell indicated that if I so testified, it could cause problems. Magruder then raised the fact that I had previously agreed, in an earlier meeting, that I would follow the testimonial approach they had taken before the grand jury.

I told them I recalled the meeting. Magruder then said that it had been I who had suggested that the meetings be treated as dealing exclusively with the election law and that explained my presence. At this point in time, I decided I did not wish to get into a debate regarding that meeting. They both repeated to me that if I testified other than they had it would only cause problems. I said I understood that. I told them that there was no certainty that I would be called before the grand jury or the Senate committee and that if I were called, I might invoke executive privilege, so the question of my testimony was still moot. I did not want to discuss the subject further so I tried to move them off of it. They were obviously both disappointed that I was being reluctant in agreeing to continue to perpetuate their earlier testimony.

The only other matter of any substance that came up during that meeting was when I made the point that I had never asked Mitchell

*See p. 1263.

Mr. DASH. And Mr. Haldeman knew that then, did he not?

Mr. MAGRUDER. I cannot recall in my meeting with him in January whether—yes, I am sure I did discuss those meetings, yes.

Mr. DASH. So the attempt to get together and agree on that meeting was an attempt to get together and agree on at least from your point of view, would be the full story?

Mr. MAGRUDER. That is correct, Mr. Haldeman recommended that Mr. Dean and Mr. Mitchell and I meet, which we did that afternoon.

Mr. DASH. What was the result of that meeting?

Mr. MAGRUDER. I realize that Mr. Dean had different opinions then as to what he would do probably, and so then my—I thought that probably it was more appropriate that even on that Monday that I get separate counsel so that I could get advice independent of the individuals who had participated with me in these activities.

Mr. DASH. In other words, you really could not agree at the meeting with Mr. Mitchell and Mr. Dean.

Mr. MAGRUDER. Well, it was cooperative.

Mr. DASH. What was Mr. Dean's position?

Mr. MAGRUDER. He would not indicate a position.

Mr. DASH. All right. Did there come a time when you did get independent counsel?

Mr. MAGRUDER. Yes, Mr. Parkinson, who was counsel of the committee, recommended Mr. Bierbower and on that Saturday I went to meet him, he was out of the country, and I met him and we agreed, he agreed to be my counsel that Saturday evening.

Mr. DASH. Did there come a time when you decided that you should go to the U.S. attorney's office?

Mr. MAGRUDER. Yes, that is correct.

Mr. DASH. When did you go to the U.S. attorney's office?

Mr. MAGRUDER. We agreed, they discussed the things with the U.S. attorney, I think on April 12 and I saw them informally on April 13 and saw them formally on April 14 on Saturday, April 14.

Mr. DASH. At that time did you tell everything to the assistant U.S. attorneys?

Mr. MAGRUDER. Yes, I cooperated.

Mr. DASH. Who did you meet with?

Mr. MAGRUDER. Mr. Silbert, Mr. Glanzer, and Mr. Campbell.

Mr. DASH. Did you tell them everything you are now telling this committee?

Mr. MAGRUDER. Yes.

Mr. DASH. Did you have a meeting afterward with Mr. Ehrlichman?

Mr. MAGRUDER. Yes, Mr. Ehrlichman called while I was with the U.S. attorneys and asked me would I come over and talk to him about the case. We talked to the U.S. attorneys and they agreed as a courtesy that we should and Mr. Bierbower and the other attorney with Mr. Bierbower and I went to see Mr. Ehrlichman that afternoon.

Mr. DASH. Then, according to that meeting that you had with Mr. Ehrlichman, what happened?

Mr. MAGRUDER. We told him in rather capsule form basically what I told you this morning.

Mr. DASH. All right.

Now, I have just two final questions. I want to go back to the time when you came back from California to Washington, putting you back

Ehrlichman and Haldeman to review the results of three weeks investigation and to determine the future course of action. Based on Ehrlichman's report, the President concluded Mitchell should go before a grand jury. The President instructed Ehrlichman to see Magruder and tell him that he did not serve the President by remaining silent. The President told Ehrlichman that when he met with Mitchell to advise him that "the President has said let the chips fall where they may. He will not furnish cover for anybody." The President told Ehrlichman to tell Magruder to purge himself and tell this whole story.

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scenario that was spun out, that Dean spun out on Mitchell is basically the right one. I don't think Mitchell did order the Watergate bugging and I don't think he was specifically aware of the Watergate bugging at the time it was instituted. I honestly don't.

E That may be.

(Material unrelated to Presidential actions deleted)

P What did he say? What did he tell Moore?

E Well, remember I asked Moore to find out what Mitchell had testified to.

P Yeah. Moore heard the testimony and said well you're not --

He was never asked the right questions. Now, as far as he

H He probably didn't to the Grand Jury, either.

E That's right. As far as the quality of the evidence is concerned --

(Material unrelated to Presidential actions deleted)

E Well, to go back to the

P All right. I only mentioned (unintelligible) because, let me, -- go ahead with your --

E Well, all I was going to say is that --

P All right. I now have evidence that --

E You don't have evidence if I

P I'm not convinced he's guilty but I am convinced that he ought to go before a Grand Jury.

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P got to make this move today. If it fails, just to get back
our position I think you ought to talk to Magruder.

H I agree.

P And you tell Magruder, now Jeb, this evidence is coming in
you ought to go to the Grand Jury. Purge yourself if you're
perjured and tell this whole story.

H I think we have to.

P Then, well, Bob, you don't agree with that?

H No. I do.

Because I think we do have to. Third, we've got the problem

H You should talk to (unintelligible) first though.

E What really matters, Bob, is that either way --

P Yeah.

E Who is ever (unintelligible)

P You see the point is --

H But don't use Jeb as a basis for the conversation.

P Yeah. Say that the evidence is not Jeb. I'd just simply say that
these other people are involved in this. With Jeb, although he
may blow --

E I can say that I have come to the conclusion that it is both John
and Jeb who are liable.

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E pass unpunished. I can't make that judgment for you and I don't have any right to make it for you. All I'm saying is that if we're looking at this thing from the standpoint of the President, today is probably the last day that you can take that action, if you're ever going to take it to do the President a bit of good."

P "Do you realize, John, that from the White House, I mean, Colson, maybe Haldeman are going to get involved in this thing too?"

E Well, here again, we're looking at this thing not from the standpoint of any other individual. "We are looking at it from the standpoint of the Presidency and that's the only way I think you and I can approach this."

P And I'd go further and say, "The President has said let the chips fall where they may. He will not furnish cover for anybody." I think you ought to say that.

E That's right.

P Don't you agree, Bob? That isn't it?

H He may go, He may get Chuck.

31. On April 15, 1973, the President met with Attorney General Kleindienst. They considered who should be in charge of the continuing investigation. The President met with Assistant Attorney General Petersen on the afternoon of April 15, 1973, in his EOB office. At this meeting Petersen indicated there was no criminal case on Haldeman and Ehrlichman at this time. Having been told Liddy would not talk unless authorized by "higher authority" the President instructed Petersen to tell Liddy's counsel the President would confirm his urging of Liddy to cooperate.

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and that's why we had no control. Well, anyway,
I'm not making excuses. The thing to do now is to.

K Deal with the facts as you have them.

P Go forward.

K It would have to be by you, Mr. President.

P There's (unintelligible). How about another man that
we could bring down? How about a former Circuit
Court Judge like Lombard?

K Well the Chief Justice doesn't like that unless he has
completely retired from the judiciary.

' Says he can serve if we gave him an interim appointment?

K Yes--yeah.

P Seventy-one years of age?

K No-no. What you are doing is having a Federal judiciary.

P Well it seems to me that's the same.

K The Chief Justice thinks this fellow Sears--he's the
one who recommended Sears.

P Thinks we should have a special prosecutor?

K Yes. He does. Yes.

P Now what does he say--now--I want to get some other
judgments because I--I'm open on this. I lean against
it and I think it's too much of a reflection on our system
of justice and everything else.

to come back to him if we disagreed, and so I think the criticism is wholly unwarranted.

Mr. DASH. Did you receive a call from the President on April 30, 1973?

Mr. PETERSEN. Yes, sir.

Mr. DASH. Could you tell us what that call was about?

Mr. PETERSEN. April 30, 1973?

Mr. DASH. Yes.

Mr. PETERSEN. He called up and said, you can tell your wife that the President has done what needed to be done, and I want to thank you for what you have done.

To the extent that requires some explanation in the course of our conversations, I was impressing upon the President the situation so far as I was concerned was degenerating, and it was vitally affecting the people's confidence in the White House, and I related to him a conversation that I had with my wife at the breakfast table in which she had said, "Do you think the President is involved?" And I related that to the President and I said, "If I reach the point where I think you are involved, I have got to resign. If I come up with evidence of you, I am just going to waltz it over to the House of Representatives." but I said, "What is important is that my wife, who is no left wing kook, is raising these questions of me, and that indicates to me that you have got a most serious problem."

And that affected the President quite strongly, and when he called me on April 30, he made that point.

Mr. DASH. This was the day that he announced the resignation of Mr. Haldeman, and Mr. Ehrlichman, and the leaving of the office at his request of Mr. Dean.

Mr. PETERSEN. That is right.

Mr. DASH. I have no further questions, Mr. Chairman.

Senator ERVIN. Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. Petersen, let me ask you a few more detailed questions about your meeting with the President on April 15. You stated that you told him on that occasion that although you possibly didn't have a criminal case against Haldeman and Ehrlichman, that it could be very embarrassing to the Presidency.

What information did you have on Haldeman and Ehrlichman at that time? What had Dean told the prosecutors about Haldeman's and Ehrlichman's involvement in the Watergate matter?

Mr. PETERSEN. Well, we had not too much on Mr. Ehrlichman at that point. We had Dean's statement that Ehrlichman had told Dean to "deep six" certain information recovered by Dean from Mr. Hunt's office. If you don't mind, I will refer to my notes on this.

Mr. THOMPSON. Yes, sir.

Mr. PETERSEN. Too, that Mr. Dean had said that Ehrlichman through Dean had informed Liddy that Hunt should leave the country. Hunt corroborated this in part in that he testified that Liddy had told him that Liddy's principals wanted Hunt out of the country.

Hunt did not testify with respect to or identify Ehrlichman.

That is the basic information, the only information we had on Ehrlichman at that point.

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EXHIBIT NO. 147

April 16, 1973

John Ehrlichman

We have no other information as of this time except the following items:

1. That Ehrlichman in the period immediately following the breakin told John Dean to "deep six" certain information recovered by Dean from Hunt's office.

2. That Ehrlichman through Dean informed Liddy that Hunt should leave the country. Hunt corroborates this in that he testified before the grand jury that Liddy told him that his, Liddy's, principals, wanted Hunt out of the country. Hunt states that as he was preparing to leave, he was called again by Liddy and informed by Liddy that Liddy's principals had countermanded the order. Hunt further states that notwithstanding he then departed for California.

With respect to Item One you will recall that I told you that Dean had on one occasion indicated to me that he had given certain non-Watergate information recovered from Hunt's office to Pat Gray personally. Sometime during the middle of March, I had occasion to consider this matter and I asked Pat Gray. Gray told me on that occasion that he had received no information from John Dean other than that which was given to the agents.

Today I again raised the matter with Pat Gray and told him specifically what Dean had stated to the prosecutors who are debriefing him. Gray emphatically denied that he had ever received any information from Hunt's office from John Dean. Gray states that all the information and records recovered from Hunt's office were received by agents of the FBI in the normal course of business.

Bob Haldeman

With respect to Bob Haldeman's alleged involvement in the Watergate Dean states that in December of 71 or early parts of January 1972 there were a series of meetings, three in number, with John Mitchell which took place in Mitchell's office.

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Present were Liddy, Magruder, Dean and Mitchell. At each of these meetings the Liddy operation was discussed. The purpose being to obtain information about Democratic presidential contenders. On the first two occasions Mitchell refused to authorize the budget proposals. The first being \$1,000,000 and the second \$500,000. On the third occasion Mitchell approved the reduced budget of \$300,000. The operation was described as "gemstone." Magruder says the budget information was given to Strachen. Magruder also says that information given to Strachen was for delivery to Haldeman. Magruder is not in a position to say that Strachen actually delivered the information.

Dean states that after the second meeting with Mitchell, Liddy and Magruder, he returned to the White House and relayed to Bob Haldeman the nature of the proposals being discussed and stated that we ought not to have any part of them. Dean states Haldeman agreed but apparently no one issued any instructions that this surveillance program was to be discontinued.

Magruder further states that he caused to be delivered to Strachen for transmittal to Haldeman a summary of the intercepted conversation. Again Magruder is not in a position to say that Strachen actually delivered the information to Haldeman. Magruder does say that the nature of the information was such that it was clear that it emanated from intercepted telephone conversations.

Strachen

Strachen appeared at the U. S. Attorney's office was informed of his rights and ~~advised~~ was questioned by the prosecutors concerning the Haldeman allegation. Despite considerable fencing Strachen refused to discuss the matter and he was excused by the prosecutors with instructions to obtain legal counsel and return this afternoon.

HP No, no - I don't want to leave that impression.

P Because of Mitchell, huh?

HP He is taking orders from higher authority. The decision is mine but since you are the highest authority he will stand in line if we handle it discreetly.

P I just want him to be sure to understand that as far as the President is concerned everybody in this case is to talk and to tell the truth. You are to tell everybody, and you don't even have to call me on that with anybody. You just say those are your orders.

IP Yes, Sir.

P Ok.

HP Alright, thank you, sir.

April 16, 1973, discussed with Dean his resignation, and advised him to be totally truthful in his explanations. The President asked Dean not to lie about the President either.

At this same meeting Dean explained to the President that O'Brien had been the one who relayed Hunt's demand, that Dean had informed Ehrlichman and Ehrlichman advised Dean to inform Mitchell which Dean did. Dean told the President that all along he had tried to make sure that anything he passed to the President didn't cause the President any personal problems.

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D Yes, I said that. I am incapable of it.

P Thank God. Don't ever do it John. Tell the truth. That is the thing I have told everybody around here. (expletive omitted) tell the truth! All they do John is compound it.

P That (characterization omitted) Hiss would be free today if he hadn't lied. If he had said, "Yes I knew Chambers and as a young man I was involved with some Communist activities but I broke it off a number of years ago." And Chambers would have dropped it. If you are going to lie, you go to jail for the lie rather than the crime. So believe me, don't ever lie.

D The truth always emerges. It always does.
Also there is a question of right and wrong too.

D That's right.

P Whether it is right and whether it is wrong. Perhaps there are some gray areas, but you are right to get it out now.

D I am sure.

P On Liddy I wanted to be sure. You recall our conversation. You asked me to do something. I have left it with Petersen now and he said he would handle it. That's the proper place. When Liddy says he cannot talk with peers it must be higher authority, I am not his higher authority. It is Mitchell.

D Well, he obviously is looking for the ultimate, but I think he is looking for the ultimate. He has the impression that you and Mitchell probably talk on the telephone daily about this.

P You know we have never talked about this.

D No, I think you are in front right now and you can rest assured everything I do will keep you as far as --

P No, I don't want, understand when I say don't lie. Don't lie about me either.

D No, I won't sir -- you --

P I think I have done the right thing, but I want you to -- if you feel I have done the right thing, the country is entitled to know it. Because we are talking about the Presidency here.

D This thing has changed so dramatically. The whole situation since I gave you the picture

P Since you sat in that chair --

D In that chair over there and gave you what I thought were the circumstances, the potential problems. You have done nothing but try to get to the bottom of this thing, and --

P I think so. Well, I said, "Write a report." But my purpose was you write a report as I said, "I want the Segretti stuff. Put everything else. Was the White House involved? You know, et cetera." How about -- one last thing. Colson. You don't think they are going to get him into something?

D I think he has some technical problems close also. I don't know if he has any. To the best of my knowledge, he had no advance knowledge of this thing.

P Right. I suppose the key there is Hunt. He was so close to Hunt. I just want to know for my own benefit. As I told you last night, I don't want to get out there in front and have someone say "What about Chuck Colson?"

No, no. O'Brien, who was one of the lawyers who was representing the Re-Election Committee, was asked by Hunt to meet with him. He came to me after the meeting and said that Hunt asked that the following message be passed to you. I said, "why me?" He said, "I asked Hunt the same question."

P You, Dean ---or me, the President?

D Passed to me, Dean.

P He had never asked you before?

D No.

P Let me tell you. What did you report to me on-though.

It was rather fragmentary, as I recall it. You said Hunt had a problem --

Very fragmentary. I was --

P I said, "Why, John, how much is it going to cost to do this?" That is when I sent you to Camp David and said (expletive removed) "Let's see where this thing comes out."

D That's right.

P And you said it could cost a million dollars.

D I said it conceivably could. I said, "If we don't cut this thing -- "

P How was that handled? Who handled that money?

D Well, let me tell you the rest of what Hunt said. He said, "You tell Dean that I need \$72,000 for my personal expenses, \$50,000 for my legal fees and if I don't get it I am going to have some things to say about the seamy things I did at the White House for John Ehrlichman." Alright I took

that to John Ehrlichman. Ehrlichman said, "Have you talked to Mitchell about it?" I said, "No, I have not." He said, "Well, will you talk to Mitchell?" I said, "Yes I will." I talked to Mitchell. I just passed it along to him. And then we were meeting down here a few days later in Bob's office with Bob and Ehrlichman, and Mitchell and myself, and Ehrlichman said at that time, "Well is that problem with Hunt straightened out?" He said it to me and I said "Well, ask the man who may know: Mitchell." Mitchell said, "I think that problem is solved."

P That's all?

D That's all he said.

P In other words, that was done at the Mitchell level?
That's right.

P But you had knowledge; Haldeman had knowledge; Ehrlichman had knowledge and I suppose I did that night. That assumes culpability on that, doesn't it?

D I don't think so.

P Why not? I plan to be tough on myself so I can handle the other thing. I must say I did not even give it a thought at the time.

D No one gave it a thought at the time.

P You didn't tell me this about Ehrlichman, for example, when you came in that day.

D I know.

P You simply said, "Hunt needs this money." You were using it as an example of the problems ahead.

D I have tried all along to make sure that anything I passed 799
to you myself didn't cause you any personal problems.

P John, let me ask you this. Let us suppose if this thing
breaks and they ask you John Dean, "Now, John, you were the
President's Counsel. Did you report things to the President?"

D I would refuse to answer any questions unless you waive
the privilege.

P On this point, I would not waive. I think you should say,
"I reported to the President. He called me in and asked me
before, when the event first occurred, and passed to the
President the message that no White House personnel in the
course of your investigation were involved." You did do
that didn't you?

D I did that through Ehrlichman and Haldeman.

P I know you did because I didn't see you until after the
Election.

D That's right.

P Then you say, after the election when the McCord thing
broke, the President called you in. I think that is when
it was, wasn't it?

D No. It was before the McCord thing, because you remember
you told me after Friday morning that McCord's letter --
you said, "you predicted this was going to happen." Because
I had oh, in the week or two weeks --

P Why did I get you in there? What triggered me getting you
in?

D Well, we just started talking about this thing.

P But I called you and Moore together for a Dean Report,

33. On April 27, Petersen reported to the President that Dean's lawyer was threatening that unless Dean got immunity, they would bring "the President in--not this case but in other things." The President told Petersen to use immunity if he needed to get the facts, but there would be no blackmail. It was not until June 25, 1973, while testifying before the Senate Select Committee that Dean stated the President had prior knowledge of the cover-up.

Page

33a Transcript, April 27, 1973,
5:37-5:43 p.m., p. 1261, 1276 224

Appendix 48. Meeting: The President, Petersen and Ziegler,
Oval Office, April 27, 1973. (6:04 - 6:48 p.m.)

P Come in. As, like all things, some substance, some falsity.

HP Ah. last Monday Charlie Shaffer was in the office, and a
continuation of the negotiations. Charlie Shaffer is the lawyer.
Charlie is a very bright, able bombastic fellow. And he was
carrying on as if we're making a summation in a case. And
he said -- that -- ah he was threatening, "We will bring the
President in -- not this case but in other things" What "other
things" are we don't know what in the hell they are talking about.

P Don't worry.

HP "In other areas," more specifically is the word he used. That
they regarded -- and didn't consider of importance they regarded
as the elaboration of his earlier threat. You know, "We'll
try this Administration -- Nixon -- what have you, what have you."
There's a new conversation by them with Dean since the Sunday
we first met (unintelligible) Whatever is said is through
Shaffer the lawyer.

P What else do you have besides that?

HP Well, let's see. They did say that at a later date in the proceedings
that Dean went to the President, and I assume that's the
February or March or whatever that date was. But that's in
the course of your trying to find out. Ah, today they were

HP as adversaries. They are decent. They are honorable lawyers, they are a pleasure to deal with.

P All right. We have got the immunity problem resolved. Do it. Dean if you need to, but boy I am telling you -- there ain't going to be any blackmail.

HP Mr. President, I --

P Don't let Dick Kleindienst say it. Dean ain't -- "Hunt is going to blackmail you." Hunt's not going to blackmail any of us.

"It is his word, basically, against yours." It's his word against mine. Now for -- who is going to believe John Dean?

We relied on the damned so -- Dean, Dean was the one who told us throughout the summer that nobody in the White House was involved when he, himself apparently, was involved, particularly on the critical angle of subornation of perjury.

That's the one that -- I will never, never understand John.

HP I, I can almost quote him. He said, "Henry, God damn it, I need this information. That man has designated me to get all these facts." And he calls me in there and chews my ass off.

P Do you know something?

HP And this was before the trial --

34. On March 1, 1974, a federal grand jury returned an indictment against seven individuals charging all defendants with one count of conspiracy in violation of Title 18 U.S.C. Sec. 371 and charging some of the defendants with additional charges of perjury, making false declarations to a grand jury or court, making false statements to agents of the FBI and obstruction of justice.

Page

34a	Indictment, U. S. District Court for D. C., <u>U. S. v. John N. Mitchell et al.</u> , Cr. 74-110, March 1, 1974, p. 1-15.....	228
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, HARRY R.
HALDEMAN, JOHN D. EHRLICHMAN,
CHARLES W. COLSON, ROBERT C.
MARDIAN, KENNETH W. PARKINSON,
and GORDON STRACHAN,

Defendants.

Criminal No.

Violation of 18 U.S.C.
§§ 371, 1001, 1503, 1621,
and 1623 (conspiracy,
false statements to a
government agency, ob-
struction of justice,
perjury and false
declarations.)

INDICTMENT

The Grand Jury charges:

Introduction

1. On or about June 17, 1972, Bernard L. Barker, Virgilio R. Gonzalez, Eugenio R. Martinez, James W. McCord, Jr. and Frank L. Sturgis were arrested in the offices of the Democratic National Committee, located in the Watergate office building, Washington, D. C., while attempting to photograph documents and repair a surreptitious electronic listening device which had previously been placed in those offices unlawfully.

2. At all times material herein, the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation were parts of the Department of Justice, a department and agency of the United States, and the Central Intelligence Agency was an agency of the United States.

3. Beginning on or about June 17, 1972, and con-

indictment, the Federal Bureau of Investigation and the United States Attorney's Office for the District of Columbia were conducting an investigation, in conjunction with a Grand Jury of the United States District Court for the District of Columbia which had been duly empanelled and sworn on or about June 5, 1972, to determine whether violations of 18 U.S.C. 371, 2511 and 22 D.C. Code 1801(b), and of other statutes of the United States and of the District of Columbia, had been committed in the District of Columbia and elsewhere, and to identify the individual or individuals who had committed, caused the commission of, and conspired to commit such violations.

4. On or about September 15, 1972, in connection with the said investigation, the Grand Jury returned an indictment in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia charging Bernard L. Barker, Virgilio R. Gonzalez, E. Howard Hunt, Jr., G. Gordon Liddy, Eugenio R. Martinez, James W. McCord, Jr., and Frank L. Sturgis with conspiracy, burglary and unlawful endeavor to intercept wire communications.

5. From in or about January 1969, to on or about March 1, 1972, JOHN N. MITCHELL, the DEFENDANT, was Attorney General of the United States. From on or about April 9, 1972, to on or about June 30, 1972, he was Campaign Director of the Committee to Re-Elect the President.

6. At all times material herein up to on or about April 30, 1973, HARRY R. HALDEMAN, the DEFENDANT, was

- 3 -

7. At all times material herein up to on or about April 30, 1973, JOHN D. EHRLICHMAN, the DEFENDANT, was Assistant for Domestic Affairs to the President of the United States.

8. At all times material herein up to on or about March 10, 1973, CHARLES W. COLSON, the DEFENDANT, was Special Counsel to the President of the United States.

9. At all times material herein, ROBERT C. MARDIAN, the DEFENDANT, was an official of the Committee to Re-Elect the President.

10. From on or about June 21, 1972, and at all times material herein, KENNETH W. PARKINSON, the DEFENDANT, was an attorney representing the Committee to Re-Elect the President.

11. At all times material herein up to in or about November 1972, GORDON STRACHAN, the DEFENDANT, was a Staff Assistant to HARRY R. HALDEMAN at the White House. Thereafter he became General Counsel to the United States Information Agency.

COUNT ONE

12. From on or about June 17, 1972, up to and including the date of the filing of this indictment, in the District of Columbia and elsewhere, JOHN N. MITCHELL, HARRY R. HALDEMAN, JOHN D. EHRLICHMAN, CHARLES W. COLSON, ROBERT C. MARDIAN, KENNETH W. PARKINSON and GORDON STRACHAN, the DEFENDANTS, and other persons to the Grand Jury known and unknown, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other, to

commit offences against the United States, to wit, to obstruct justice in violation of Title 18, United States Code, Section 1503, to make false statements to a government agency in violation of Title 18, United States Code, Section 1001, to make false declarations in violation of Title 18, United States Code, Section 1623, and to defraud the United States and Agencies and Departments thereof, to wit, the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), and the Department of Justice, of the Government's right to have the officials of these Departments and Agencies transact their official business honestly and impartially, free from corruption, fraud, improper and undue influence, dishonesty, unlawful impairment and obstruction, all in violation of Title 18, United States Code, Section 371.

13. It was a part of the conspiracy that the conspirators would corruptly influence, obstruct and impede, and corruptly endeavor to influence, obstruct and impede, the due administration of justice in connection with the investigation referred to in paragraph three (3) above and in connection with the trial of Criminal Case No. 1827-72 in the United States District Court for the District of Columbia, for the purpose of concealing and causing to be concealed the identities of the persons who were responsible for, participated in, and had knowledge of (a) the activities which were the subject of the investigation and trial, and (b) other illegal and improper activities.

14. It was further a part of the conspiracy that the conspirators would knowingly make and cause to be made false statements to the FBI and false material statements and declarations under oath in proceedings before and ancillary to the Grand Jury and a Court of the United States, for the purposes stated in paragraph thirteen (13) above.

15. It was further a part of the conspiracy that the conspirators would, by deceit, craft, trickery and dishonest means, defraud the United States by interfering with and obstructing the lawful governmental functions of the CIA, in that the conspirators would induce the CIA to provide financial assistance to persons who were subjects of the investigation referred to in paragraph three (3) above, for the purposes stated in paragraph thirteen (13) above.

16. It was further a part of the conspiracy that the conspirators would, by deceit, craft, trickery and dishonest means, defraud the United States by interfering with and obstructing the lawful governmental functions of the FBI and the Department of Justice, in that the conspirators would obtain and attempt to obtain from the FBI and the Department of Justice information concerning the investigation referred to in paragraph three (3) above, for the purposes stated in paragraph thirteen (13) above.

17. Among the means by which the conspirators would carry out the aforesaid conspiracy were the follow-

(a) The conspirators would direct G. Gordon Liddy to seek the assistance of Richard G. Kleindienst, then Attorney General of the United States, in obtaining the release from the District of Columbia jail of one or more of the persons who had been arrested on June 17, 1972, in the offices of the Democratic National Committee in the Watergate office building in Washington, D. C., and G. Gordon Liddy would seek such assistance from Richard G. Kleindienst.

(b) The conspirators would at various times remove, conceal, alter and destroy, attempt to remove, conceal, alter and destroy, and cause to be removed, concealed, altered and destroyed, documents, papers, records and objects.

(c) The conspirators would plan, solicit, assist and facilitate the giving of false, deceptive, evasive and misleading statements and testimony.

(d) The conspirators would give false, misleading, evasive and deceptive statements and testimony.

(e) The conspirators would covertly raise, acquire, transmit, distribute and pay cash funds to and for the benefit of the defendants in Criminal Case No. 1827-72 in the United States District Court for the District

of Columbia, both prior to and subsequent to the return of the indictment on September 15, 1972.

(f) The conspirators would make and cause to be made offers of leniency, executive clemency and other benefits to E. Howard Hunt, Jr., G. Gordon Liddy, James W. McCord, Jr., and Jeb S. Magruder.

(g) The conspirators would attempt to obtain CIA financial assistance for persons who were subjects of the investigation referred to in paragraph three (3) above.

(h) The conspirators would obtain information from the FBI and the Department of Justice concerning the progress of the investigation referred to in paragraph three (3) above.

18. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of Columbia and elsewhere:

OVERT ACTS

1. On or about June 17, 1972, JOHN N. MITCHELL met with ROBERT C. MARDIAN in or about Beverly Hills, California, and requested MARDIAN to tell G. Gordon Liddy to seek the assistance of Richard G. Kleindienst, then Attorney General of the United States, in obtaining the release of one or more of the persons arrested in

2. On or about June 18, 1972, in the District of Columbia, GORDON STRACHAN destroyed documents on the instructions of HARRY R. HALDEMAN.

3. On or about June 19, 1972, JOHN D. EHRLICHMAN met with John W. Dean, III, at the White House in the District of Columbia, at which time EHRLICHMAN directed Dean to tell G. Gordon Liddy that E. Howard Hunt, Jr., should leave the United States.

4. On or about June 19, 1972, CHARLES W. COLSON and JOHN D. EHRLICHMAN met with John W. Dean, III, at the White House in the District of Columbia, at which time EHRLICHMAN directed Dean to take possession of the contents of E. Howard Hunt, Jr.'s safe in the Executive Office Building.

5. On or about June 19, 1972, ROBERT C. MARDIAN and JOHN N. MITCHELL met with Jeb S. Magruder at MITCHELL's apartment in the District of Columbia, at which time MITCHELL suggested that Magruder destroy documents from Magruder's files.

6. On or about June 20, 1972, G. Gordon Liddy met with Fred C. LaRue and ROBERT C. MARDIAN at LaRue's apartment in the District of Columbia, at which time Liddy told LaRue and MARDIAN that certain "commitments" had been made to and for the benefit of Liddy and other persons involved in the Watergate break-in.

7. On or about June 24, 1972, JOHN N. MITCHELL and ROBERT C. MARDIAN met with John W. Dean, III, at 1701 Pennsylvania Avenue in the District of Columbia, at which time MITCHELL and MARDIAN suggested to Dean that the CIA be requested to provide covert funds for the assistance of

8. On or about June 26, 1972, JOHN D. EHRLICHMAN met with John W. Dean, III, at the White House in the District of Columbia, at which time EHRLICHMAN approved a suggestion that Dean ask General Vernon A. Walters, Deputy Director of the CIA, whether the CIA could use covert funds to pay the bail and salaries of the persons involved in the Watergate break-in.

9. On or about June 28, 1972, JOHN D. EHRLICHMAN had a conversation with John W. Dean, III, at the White House in the District of Columbia, during which EHRLICHMAN approved the use of Herbert W. Kalmbach to raise cash funds with which to make covert payments to and for the benefit of the persons involved in the Watergate break-in.

10. On or about July 6, 1972, KENNETH W. PARKINSON had a conversation with William O. Bittman in or about the District of Columbia, during which PARKINSON told Bittman that "Rivers is OK to talk to."

11. On or about July 7, 1972, Anthony Ulasewicz delivered approximately \$25,000 in cash to William O. Bittman at 815 Connecticut Avenue, N. W., in the District of Columbia.

12. In or about mid-July, 1972, JOHN N. MITCHELL and KENNETH W. PARKINSON met with John W. Dean, III, at 1701 Pennsylvania Avenue, N. W. in the District of Columbia, at which time MITCHELL advised Dean to obtain FBI reports of the investigation into the Watergate break-in for PARKINSON and others.

13. On or about July 17, 1972, Anthony Ulasewicz delivered approximately \$40,000 in cash to Dorothy Hunt

14. On or about July 17, 1972, ANTHONY ULASEWICZ delivered approximately \$8,000 in cash to G. Gordon Liddy at Washington National Airport.

15. On or about July 21, 1972, ROBERT C. MARDIAN met with John W. Dean, III, at the White House in the District of Columbia, at which time MARDIAN examined FBI reports of the investigation concerning the Watergate break-in.

16. On or about July 26, 1972, JOHN D. EHRLICHMAN met with Herbert W. Kalmbach at the White House in the District of Columbia, at which time EHRLICHMAN told Kalmbach that Kalmbach had to raise funds with which to make payments to and for the benefit of the persons involved in the Watergate break-in, and that it was necessary to keep such fund raising and payments secret.

17. In or about late July or early August, 1972, Anthony Ulasewicz made a delivery of approximately \$43,000 in cash at Washington National Airport.

18. In or about late July or early August, 1972, Anthony Ulasewicz made a delivery of approximately \$18,000 in cash at Washington National Airport.

19. On or about August 29, 1972, CHARLES W. COLSON had a conversation with John W. Dean, III, during which Dean advised COLSON not to send a memorandum to the authorities investigating the Watergate break-in.

20. On or about September 19, 1972, Anthony Ulasewicz delivered approximately \$53,500 in cash to Dorothy Hunt at Washington National Airport.

21. On or about September 19, 1972, in the District of Columbia, Fred C. LaRue arranged for the delivery of

22. On or about November 13, 1972, in the District of Columbia, E. Howard Hunt, Jr., had a telephone conversation with CHARLES W. COLSON, during which Hunt discussed with COLSON the need to make additional payments to and for the benefit of the defendants in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

23. In or about mid-November, 1972, CHARLES W. COLSON met with John W. Dean, III, at the White House in the District of Columbia, at which time COLSON gave Dean a tape recording of a telephone conversation between COLSON and E. Howard Hunt, Jr.

24. On or about November 15, 1972, John W. Dean, III, met with JOHN D. EHRLICHMAN and HARRY R. HALDEMAN at Camp David, Maryland, at which time Dean played for EHRLICHMAN and HALDEMAN a tape recording of a telephone conversation between CHARLES W. COLSON and E. Howard Hunt, Jr.

25. On or about November 15, 1972, John W. Dean, III, met with JOHN N. MITCHELL in New York City, at which time Dean played for MITCHELL a tape recording of a telephone conversation between CHARLES W. COLSON and E. Howard Hunt, Jr.

26. On or about December 1, 1972, KENNETH W. PARKINSON met with John W. Dean, III, at the White House in the District of Columbia, at which time PARKINSON gave Dean a list of anticipated expenses of the defendants during the trial of Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

27. In or about early December, 1972, HARRY R. HALDEMAN had a telephone conversation with John W. Dean, III, during which HALDEMAN approved the use of a portion of a cash fund of approximately \$350,000, then being held under HALDEMAN's control, to make additional payments to and for the benefit of the defendants in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

28. In or about early December, 1972, GORDON STRACHAN met with Fred C. LaRue at LaRue's apartment in the District of Columbia, at which time STRACHAN delivered approximately \$50,000 in cash to LaRue.

29. In or about early December, 1972, in the District of Columbia, Fred C. LaRue arranged for the delivery of approximately \$40,000 in cash to William O. Bittman.

30. On or about January 3, 1973, CHARLES W. COLSON met with JOHN D. EHRLICHMAN and John W. Dean, III, at the White House in the District of Columbia, at which time COLSON, EHRLICHMAN and Dean discussed the need to make assurances to E. Howard Hunt, Jr. concerning the length of time E. Howard Hunt, Jr. would have to spend in jail if he were convicted in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

31. In or about early January, 1973, HARRY R. HALDEMAN had a conversation with John W. Dean, III, during which HALDEMAN approved the use of the balance of the cash fund referred to in Overt Act No. 27 to make additional payments to and for the benefit of the defendants in Criminal Case No. 1827-72 in the United States District

32. In or about early January, 1973, GORDON STRACHAN met with Fred C. LaRue at LaRue's apartment in the District of Columbia, at which time STRACHAN delivered approximately \$300,000 in cash to LaRue.

33. In or about early January, 1973, JOHN R. MITCHELL had a telephone conversation with John W. Dean, III, during which MITCHELL asked Dean to have John C. Caulfield give an assurance of executive clemency to James W. McCord, Jr.

34. In or about mid-January, 1973, in the District of Columbia, Fred C. LaRue arranged for the delivery of approximately \$20,000 in cash to a representative of G. Gordon Liddy.

35. On or about February 11, 1973, in Rancho La Costa, California, JOHN D. EHRLICHMAN and HARRY R. HALDEMAN met with John W. Dean, III, and discussed the need to raise money with which to make additional payments to and for the benefit of the defendants in Criminal Case No. 1827-72 in the United States District Court for the District of Columbia.

36. In or about late February, 1973, in the District of Columbia, Fred C. LaRue arranged for the delivery of approximately \$25,000 in cash to William O. Bittman.

37. In or about late February, 1973, in the District of Columbia, Fred C. LaRue arranged for the delivery of approximately \$35,000 in cash to William C. Bittman.

38. On or about March 15, 1973, E. Howard Hunt, Jr., met with Paul O'Brien at 815 Connecticut Avenue, N. W. in the District of Columbia, at which time Hunt

39. On or about March 19, 1973, JOHN D. ENRLICHMAN had a conversation with John W. Dean, III, at the White House in the District of Columbia, during which ENRLICHMAN told Dean to inform JOHN N. MITCHELL about the fact that E. Howard Hunt, Jr. had asked for approximately \$120,000.

40. On or about March 21, 1973, from approximately 11:15 a.m. to approximately noon, HARRY R. HALDEMAN and John W. Dean, III, attended a meeting at the White House in the District of Columbia, at which time there was a discussion about the fact that E. Howard Hunt, Jr. had asked for approximately \$120,000.

41. On or about March 21, 1973, at approximately 12:30 p.m., HARRY R. HALDEMAN had a telephone conversation with JOHN N. MITCHELL.

42. On or about the early afternoon of March 21, 1973, JOHN N. MITCHELL had a telephone conversation with Fred C. LaRue during which MITCHELL authorized LaRue to make a payment of approximately \$75,000 to and for the benefit of E. Howard Hunt, Jr.

43. On or about the evening of March 21, 1973, in the District of Columbia, Fred C. LaRue arranged for the delivery of approximately \$75,000 in cash to William O. Bittman.

44. On or about March 22, 1973, JOHN D. ENRLICHMAN, HARRY R. HALDEMAN, and John W. Dean, III, met with JOHN N. MITCHELL at the White House in the District of Columbia, at which time MITCHELL assured ENRLICHMAN that E. Howard

45. On or about March 22, 1973, JOHN D. EHRLICHMAN had a conversation with Egil Krogh at the White House in the District of Columbia, at which time EHRLICHMAN assured Krogh that EHRLICHMAN did not believe that E. Howard Hunt, Jr. would reveal certain matters.

(Title 18, United States Code, Section 371.)

○

STATEMENT OF INFORMATION SUBMITTED
ON BEHALF OF PRESIDENT NIXON

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE
ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT
GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO
EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

BOOK II

DEPARTMENT OF JUSTICE-ITT LITIGATION



MAY-JUNE 1974

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COUNSEL TO THE PRESIDENT

JAMES D. ST. CLAIR, *Special Counsel to the President*
JOHN A. McCAHILL, *Assistant Special Counsel*
MALCOLM J. HOWARD, *Assistant Special Counsel*

FOREWORD

By Hon. Peter W. Rodino, Jr., Chairman
Committee on the Judiciary

On February 6, 1974, the House of Representatives adopted by a vote of 410-4 the following House Resolution 803:

RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

On May 9, 1974, as Chairman of the Committee on the Judiciary, I convened the Committee for hearings to review the results of the Impeachment Inquiry staff's investigation. The hearings were convened pursuant to the Committee's Impeachment Inquiry Procedures adopted on May 2, 1974.

These Procedures provided that President Nixon should be afforded the opportunity to have his counsel present throughout the hearings and to receive a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the members.

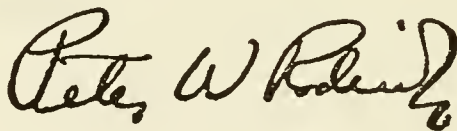
Mr. James D. St. Clair, Special Counsel to the President, was present throughout the initial presentation by the Impeachment Inquiry staff. Following the completion of the initial presentation, the Committee resolved, in accordance with its Procedures, to invite the President's counsel to respond in writing to the Committee's initial evidentiary presentation. The Committee decided that the President's response should be in the manner of the Inquiry staff's initial presentation before the Committee, in accordance with Rule A of the Committee's Impeachment Inquiry Procedures, and should consist of information and evidentiary material, other than the testimony of witnesses, believed by the President's counsel to be pertinent to the inquiry. Counsel for the President was likewise afforded the opportunity to supplement its written response with an oral presentation to the Committee.

President Nixon's response was presented to the Committee on June 27 and June 28.

One notebook was furnished to the members of the Committee relating to the Department of Justice - ITT litigation. In this notebook a statement of information relating to a particular phase of the investigation was immediately followed by supporting evidentiary material which included copies of documents and testimony (much already on the public record) and transcripts of Presidential conversations.

The Committee on the Judiciary is working to follow faithfully its mandate to investigate fully and completely "whether or not sufficient grounds exist" to recommend that the House exercise its constitutional power of impeachment.

Consistent with this mandate, the Committee voted to make public the President's response in the same form and manner as the Inquiry staff's initial presentation.

A handwritten signature in dark ink, reading "Peter W. Rodino, Jr." The signature is written in a cursive, flowing style with a large initial 'P' and a prominent 'R'.

July, 1974

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INTRODUCTORY NOTE

The material contained in this volume is presented in two sections. Section 1 contains a statement of information footnoted with citations to evidentiary material. Section 2 contains the same statement of information followed by the supporting material.

Each page of supporting evidence is labeled with the footnote number and a description of the document or the name of the witness testifying. Copies of entire pages of documents and testimony are included, with brackets around the portions pertaining to the statement of information.

In the citation of sources, "SSC" has been used as an abbreviation for the Senate Select Committee on Presidential Campaign Activities.

STATEMENT OF INFORMATION
SUBMITTED ON BEHALF
OF THE PRESIDENT

DEPARTMENT OF JUSTICE -- ITT LITIGATION

1. In December, 1968, Richard W. McLaren was interviewed for the position of Assistant Attorney General, Antitrust Division, Department of Justice, by John N. Mitchell and Richard G Kleindienst. As a condition to his acceptance of that position, Mr. McLaren insisted that antitrust enforcement decisions would be based solely on the merits of any given situation.

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2. In 1968, Mr. Nixon appointed a Task Force on Productivity and Competition to review antitrust policy and make recommendations. The task force, headed by Professor George Stigler of the University of Chicago, presented its report to President Nixon on February 18, 1969 and recommended against immediate legal action re: conglomerate mergers.

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2a <u>The Stigler Report</u> , 115 <u>Cong. Rec.</u> 15653, 15656 (1969).	26
2b White House "White Paper," The ITT <u>Anti-Trust Decision</u> , January 8, 1974, 2,.....	31
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3. Apparently, in June of 1969, Mr. Geneen sought to meet with President Nixon about certain financial and economic concerns of ITT, including, but not limited to, the antitrust suits. John N. Mitchell, for one, thought the meeting would be inappropriate because of ITT's legal involvement with the Department of Justice. The meeting was not schedule.

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4. In March, 1971, the Solicitor General authorized an appeal to the Supreme Court from an adverse decision in the United States v. ITT (Grinnell) case because of practical difficulties in the future if the decision were left standing. The Solicitor General and his associates thought the case to be very hard; his chief deputy thought the government's chances of winning were minimal.

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5. After the President's telephone call of April 19, 1971, to Kleindienst ordering him to drop the Grinnell appeal, Kleindienst met, in his office, with McLaren and the Solicitor General and requested the Solicitor General to apply for an extension. McLaren had no objection to the application for an additional extension of time.

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6. On June 17, 1971, McLaren recommended to Kleindienst that the ITT suits be settled. Kleindienst approved the proposed settlement by writing: "Approved, 6/17/71. RGK." In affixing his approval, Kleindienst relied on the expertise of McLaren.

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7. Settlement initiations had taken place in late 1970. ITT's settlement posture advanced included its keeping the Hartford Fire Insurance Company. McLaren rejected any settlement talk along that line.

In early 1971, ITT began to formulate a plan, based on economic theory, of why it was important for ITT to retain Hartford. Eventually, on April 29, 1971, ITT made an economic presentation to the Department of Justice on national economic consequences if ITT were forced to divest itself of Hartford. As a result of that presentation, in combination with the Ransdem Report from his own independent financial expert, McLaren proposed a settlement offer enabling ITT to retain Hartford.

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8. On July 31, 1971, the ITT cases were finally settled. Whether ITT would have to divest itself completely of Grinnell was a principal matter of consideration between June 17, the date of McLaren's proposal, and July 31, and in ITT's eyes, a matter upon which any settlement hinged.

According to McLaren and Kleindienst, McLaren and his staff were responsible for the settlement. Kleindienst did not talk with McLaren about this matter at any time from June 17 until July 30. Mitchell and McLaren never talked with each other about the cases. There exists no testimonial or documentary evidence to indicate that the President had any part, directly or indirectly, in the settlement of the ITT antitrust cases.

McLaren was unaware of any financial commitment by ITT in regard to San Diego's hosting of the Republican National Convention until long after the negotiations had terminated. McLaren has stated ITT's contribution had nothing to do with the settlement.

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8a Affidavit of Harold Geneen, dated June 12, 1972; 4-7...	105
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9. On July 23, 1971, the Republican National Committee selected San Diego as its selection site for the 1972 Republican National Convention. San Diego was the preferred site by William Timmons, who had investigated that city as a potential site and the Attorney General's convention task force, and was the highest regarded city for security purposes.

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9d Memorandum of June 30, 1971, from Department of Justice, Law Enforcement Assistance Administration to William Timmons.....	145

10. In response to a question at the Senate Select Committee, concerning Dita Beard's disappearance on the eve of the Kleindienst hearings, E. Howard Hunt stated that he was not aware of any role Gordon Liddy played in Mrs. Dita Beard's departure from Washington.

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10a E. Howard Hunt Testimony, 6 SSC 3791.....	154

11. On June 22, 1974, The New York Times, page 15, carried a story in which Rep. Bob Wilson (R-Calif.) said the Special Prosecutor informed him that no legal action was being considered against him in relation to the ITT matter.

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11a <u>New York Times</u> article, dated June 20, and carried in its June 22, newspaper.....	156

12. On April 4, 1972, the President met with H. R. Haldeman and Attorney General Mitchell in the Oval Office from 4:13 p.m. to 4:50 p.m. during which time the ITT matter was mentioned.

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12a Transcription of recorded conversation of above-described meeting; 1, 4-6, 8, 10, 15. (A transcription was previously furnished to the House Judiciary Committee). . 158'

13. During the days following the publication of the "Dita Beard" memorandum on February 29, 1973, several of the top White House aides were involved in investigating the allegations contained in that memorandum.

The actual settlement of the ITT cases as a quid pro quo for an ITT commitment to the Republican National Convention was the focal point of the Kleindienst Confirmation Hearings which began on March 2, 1972. Peter Flanigan, a White House aide, was the object of considerable attention from the Senate Judiciary Committee and press during the coverage of these hearings.

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13b Statement of Richard G. Kleindienst, dated 10-31-73.....	191.
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13e <u>The Washington Post</u> , April 27, 28, 1972.....	198
13f <u>The Boston Globe</u> , April 13, 1972; and <u>The Washington Post</u> , March 16, 1972.....	200

14. The President left for an official visit to the People's Republic of China on February 17, 1972; he returned on February 28, 1972. He spent the weekend following his return at Key Biscayne, Florida. On May 20, 1972, the President went to Moscow, returning on June 1, 1972.

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14a <u>Weekly Compilation of Presidential Documents,</u> Volume 8, Number 8, 443-44; Volume 8, Number 9, 482.....	204
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STATEMENT OF INFORMATION
AND
SUPPORTING EVIDENCE
SUBMITTED ON BEHALF
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DEPARTMENT OF JUSTICE -- ITT LITIGATION

1. In December, 1968, Richard W. McLaren was interviewed for the position of Assistant Attorney General, Antitrust Division, Department of Justice, by John N. Mitchell and Richard G. Kleindienst. As a condition to his acceptance of that position, Mr. McLaren insisted that antitrust enforcement decisions would be based solely on the merits of any given situation.

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Richard W. McLaren, Testimony

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memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating \$1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. McLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. McLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a \$400,000 contribution from ITT to the city of San Diego?

Mr. McLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. McLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

when they offered me the job. I made three conditions: that we would have a vigorous antitrust program; that we would follow my beliefs with regard to what the Supreme Court cases said on conglomerate mergers, and the restructuring of the industry that I thought was coming about in an almost idiotic way; and third, that we would decide all matters on the merits, there would be no political decision.

The CHAIRMAN. Now, is that correct in this case?

Mr. McLAREN. That is correct in this case, absolutely. I might add that the Attorney General and Mr. Kleindienst lived up to their commitment.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. As I construe your testimony, Judge McLaren, Mr. Kleindienst did not actively participate in the negotiation of the settlement at all?

Mr. McLAREN. All Mr. Kleindienst did was arrange that one meeting, as far as I am concerned. And during the course of that meeting, when ITT made its presentation, I was the chairman of the meeting. Mr. Kleindienst sat off on my left, and listened, so far as I recall, and, well, none of us had much to say, but he did not do really anything in any stage of the negotiations except arrange for that one meeting and approve my proposal for settling the thing after I became convinced that the 250-odd-thousand shareholders of ITT would suffer more than a \$1 billion loss if we proceeded and were successful in forcing divestiture of Hartford.

Senator ERVIN. Did he make any suggestion to you as to what the details of the negotiations should be, or what the details of the settlement should be?

Mr. McLAREN. He did not, and I did not even keep him informed as to what we were doing in the negotiations until—I think he is probably right—I telephoned him the night before we actually put the thing out and said I think that they are going to cave in on the last couple of points and we will probably announce it tomorrow.

The CHAIRMAN. And that was the course you usually followed to keep him advised of matters in your department?

Mr. McLAREN. Matters of major importance, yes, sir.

Senator ERVIN. I understand from the testimony that has been given that Attorney General Mitchell absolutely disqualified himself from any connection with these suits and proposed suits, and with the negotiations on the settlement, on the grounds that his firm at one time had represented one of the affiliates of ITT?

Mr. McLAREN. Yes, sir, that is correct.

Senator ERVIN. In other words, your testimony is that you and the members of the Antitrust Division staff conducted the investigations, and that the decision of the Government was based solely on the opinions which you and the members of your staff in the Antitrust Division had after considering all of the matters involved, and all of the implications of those matters?

Mr. McLAREN. That is right, sir.

Senator ERVIN. Now, Judge, I practiced law a long time, and I have participated in compromises in many cases, never one of any great magnitude, but my experience is that when people settle litigation they do so for approximately the same reason that Hamlet stated in his soliloquy: they are uncertain as to what the courts are going to

Richard G. Kleindienst testimony

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and that anybody else in my Department who has been here, even though we might have made mistakes of judgment, have not been guilty of any improper or illegal conduct, and as I have had to ask myself many a time, Senator Mathias, since that fateful day that I first appeared, should I have done what I did, I will say to you and to the members of the U.S. Senate that had I to do it over again, knowing that these last 2½ months would have transpired, I would have come before you under the same circumstances and said, "Take a look at our conduct and let's have this hearing," and I have no regrets about it one way or another.

Senator MATHIAS. Mr. Kleindienst, as you know, we are sifting through this record with a very fine comb; and so that we don't leave the record incomplete, I would like to call your attention to one other statement that I think you might want to comment on. I suspect that the answer you have just given, which I think is a very full answer, may apply to this, but just so that the record is complete, which is, I think, for your benefit as well as for the benefit of the committee, let me read this paragraph to you which appears on page 100:

That is, in substance and in effect, the relationship that I had with I.T. & T. and the Department of Justice in connection with the antitrust matters of that corporation before our Department. I had no discussions with any other officer or attorney or agent on behalf of I.T. & T. I had no discussions with anybody on Mr. McLaren's staff and the other persons. The only person with whom I ever discussed the matter within the Department was Judge McLaren, the person making the recommendation and handling the situation.

Now, again, I draw your attention to that with the thought in mind that what is important, really, to the committee is what got through you, the messages that got through to you, and the casual, the accidental, things which occur in everyone's life sometimes make an impact and sometimes don't.

Would you still stick with the gist of that statement, with the opportunity that you have had for reflection in the meantime?

Mr. KLEINDIENST. Well, without being subject to the accusation that I am—I don't want to throw in the whole kitchen sink—the only thing that got to me, really, was Judge McLaren. I think the judge indicated in his testimony, and I remember so vividly, when Mr. Mitchell and I interviewed him in the Pierre Hotel in New York before his appointment and before the inauguration of the President, when we had narrowed the selection of an Assistant Attorney General for Antitrust down to three people, knowing his background, he said: "I want to tell you one thing. I believe in vigorous enforcement and I want a commitment from the both of you that I will not be interfered with with respect to that enforcement."

He did believe in vigorous enforcement, with courage and with honesty and with great ability; he was not interfered with and I took my guidance in antitrust cases from Judge McLaren. I am a lawyer from Phoenix, Ariz. I never had an antitrust case in my life. He symbolizes the highest kind of lawyer from the private sector who is willing to leave a very lucrative practice and come into the Government and give the people the benefit of his art and his experience. The only thing that got through to me was Judge McLaren.

Felix Rohatyn, whom I have come to regard with a very high degree of regard, made a very persuasive presentation to me but all

2. In 1968, Mr. Nixon appointed a Task Force on Productivity and Competition to review antitrust policy and make recommendations. The task force, headed by Professor George Stigler of the University of Chicago, presented its report to President Nixon on February 18, 1969 and recommended against immediate legal action re: conglomerate mergers.

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June 12, 1969

CONGRESSIONAL RECORD—SENATE

15653

Antitrust and Trade Regulation
Report, June 10, 1959]

TEXT OF REPORT OF NIXON TASK FORCE ON
PRODUCTIVITY AND COMPETITION

SUMMARY OF RECOMMENDATIONS OF THE TASK
FORCE ON PRODUCTIVITY AND COMPETITION

We present here a summary of the recommendations of the Task Force on Productivity and Competition. These recommendations are elaborated and defended in the accompanying Report.

1. We recommend that the President issue a general policy statement (a) establishing the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition within the councils of the Administration and before the independent regulatory commissions; (b) urging those commissions to enlarge the role of competition in their industries; (c) marshaling public support for the policy of competition.

2. We urge the commissions to permit free entry in the industries under regulation and to abandon minimum rate controls, whenever these steps are possible—and we think they usually are; and we urge the President, when occasion permits, to appoint at least one economist to membership in each of the major commissions, and institute effective procedures for the review of the performance of the commissions.

3. To enhance the effectiveness of the Antitrust Division, we urge the Attorney General and the Assistant Attorney General in Charge of Antitrust to insist that every antitrust suit make good economic sense, and to institute semi-public conferences to assist in the formulation and frequent reevaluation of enforcement guidelines.

We recommend that the Department of Justice establish close liaison with the Federal Trade Commission at the highest levels, with a view toward fostering a harmonious policy of business regulation.

5. We recommend that the Department bring a series of strategic cases against regional price-fixing conspiracies, which we believe to be numerous and economically important.

6. We cannot endorse, on the basis of present knowledge of the effects of oligopoly on competition, proposals whether by new legislation or new interpretations of existing law to deconcentrate highly concentrated industries by dissolving their leading firms. But we urge the Department to maintain unremitting scrutiny of highly oligopolistic industries and to proceed under section 1 of the Sherman Act—which in our judgment reaches all important forms of collusion—in instances where pricing is found after careful investigation to be substantially noncompetitive.

7. The Department of Justice Merger Guidelines are extraordinary stringent, and in some respects indefensible. We suggest a number of revisions in the accompanying Report.

8. We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon. More broadly, we urge the Department to resist the natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets.

We recommend new legislation to include the monetary penalties, at present only nominal, for price fixing.

10. We urge a new policy for antitrust decrees. The Department should not seek the entry of regulatory decrees; decrees that envisage a continuing relationship with the defendant. Save in exceptional circumstances, all decrees should contain a near

termination date, ordinarily no more than 10 years from the date of entry. And the Department should undertake a review of existing decrees to determine which should be vacated as obsolete or inappropriate.

11. The Expediting and Webb-Pomerene Acts should be repealed, and the Robinson-Patman Act substantially revised.

12. Mr. Alexander L. Stott dissents from certain parts of the Report and from certain of the above recommendations. Mr. Raymond H. Mulford dissents from two recommendations.

REPORT OF THE TASK FORCE ON PRODUCTIVITY
AND COMPETITION

The Task Force on Productivity and Competition submits its report on the problems which will be confronted by the new administration in this area, and the steps which we recommend to be taken. The report is presented under three general headings:

I. The Administration's policy of Competition and the Role of the Antitrust Division and the Regulatory Commissions in This Policy.

II. Organization and Procedure in the Antitrust Division.

III. Recommendations for Change in Antitrust Policy.

Individual task force members would often change the emphasis of the Report, and larger differences are presented as dissents.

I. General policy

A. Antitrust Policy

The American Way, as we are constantly told, is to rely upon competitive private enterprise to do most of the work of allocating resources to industries and firms, organizing production, and providing economic progress. We are constantly travelling a shorter distance down this Way, however: for good reasons and for bad we have almost continuously expanded the governmental controls over economic life, and in recent years important restrictions have been placed upon private enterprise to protect the balance of payments. Some of the vast arsenal of public controls are unnecessary, and a large proportion of the necessary controls are excessively restrictive of competition. As one example, the safety of financial institutions is of course a major public concern, but this safety can often be achieved by insurance or similar devices, and hardly ever requires that competition be suppressed to the extent that the most incompetently managed institution will be prosperous, and hence safe.

The traditional American policy of seeking to minimize regulation of economic life is a profoundly wise policy, and deserves to be reasserted and implemented. Both logic and political expediency—not always close allies—dictate that economic freedom be subjected to the discipline of competitive markets. We believe, therefore, that the President should issue a general policy statement on competition and public regulation, to achieve at least three important purposes:

1. To establish the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition, in intra-governmental groups, and before independent regulatory bodies.

2. To encourage and urge the regulatory bodies—which cannot ignore the clear policy positions of the President even when his appointive power is dormant—to enlarge the role of competition in their respective industries.

3. To revive and strengthen public support for the policy of competition, and to establish the bona fides of the Administration as the protector of both consumer and businessman.

An executive order or a major presidential address would be an appropriate vehicle for this declaration. Whether or not a formal statement commends itself, we believe that the correct policy is one of persistent and re-

sourceful exploitation of competition wherever possible.

B. The Policy of Competition in the Regulated Industries

Our mandate to examine productivity and competition in the American economy compels us to brief examination of the work of the regulatory commissions themselves. The regulated industries comprise one-eighth or more of the economy in terms of income, and are too important to be omitted from our Report.

The tasks assigned to the regulatory agencies are various: to prevent monopoly pricing (as with telephone and pipelines); to prevent congestion (as with radio and television frequencies); to provide safety to savers (as with financial institutions); and so on. It is not possible for us here to examine these purposes critically, although it is notorious that in certain industries (such as motor trucking) there is no respectable case for economic regulation. There is widespread disenchantment with regulatory purposes as well as regulatory processes, and a general belief that excessive rigidity, expensive review of economically trivial details, and frequent failure to achieve any important results have characterized our regulatory efforts.

In two directions, we are convinced, there should be a major reorientation of the regulatory policy:

1. Entry of new firms should be encouraged wherever an absolute contradiction with regulatory goals is not involved. At present the practice is universally the opposite: to prohibit or ration with utmost severity the entrance of new firms.

2. Allow much freedom in price competition. The regulatory bodies should abandon minimum rate regulation whenever possible (and it is usually possible), and rely chiefly on maximum rate regulation.

Where rates are regulated, it is essential to make both changes: there is little merit in allowing additional firms to enter if they are not held to the test of unfettered competition with the existing firms.

We urge the Administration to pursue three complementary paths of reform in the regulated industries:

First, the commissions should have the merits of competition pressed upon them. Competition is not a matter of all or none, and the fact of regulation should not exclude competition as a force at each of a hundred points where it is relevant and feasible. If there must be only one railroad there can still be several truckers, several freight forwarders, and the possibility of inter-modal competition.

Second, the primary method of giving a larger role to competition is by appointing commissioners who understand and believe in a policy of competition. We believe that every regulatory body should have at least one economist as a commissioner. Quite aside from the implementation of the desire for more competition, this proposal has a decisive defense: economic regulation poses more economic than legal problems, and an economist knows more about economics than a non-economist. The economic triviality and irrelevance of much activity of the regulatory commissions is patent and inexcusable.

Third, the regulatory commissions are largely out of public control. Once in a decade or two, at most, a commission will be investigated by Congress. The Administration should explore methods of getting more meaningful and effective reviews than we now get. We do not know whether the best method is an enlarged Bureau of the Budget section, a national commission, the creation of academic review committees, or a special adviser to the President. The best method, however, is surely not infrequent, partisan Congressional review. The present rule of the

atory bodies is undirected, unmeasured, unevaluated.

1. Organization and procedure in the anti-trust division

A. The Utilization of Economic Knowledge

We anticipate little opposition to the proposition that the Antitrust Division make full and effective use of economists and their special skills. These skills are often necessary to understand the effects of economic practices (an example is market-sharing in fixed proportions), to assess the economic importance of individual cases, and to assist in devising remedies that will not shatter on economic realities. We endorse the policy of having a highly professional economist serving as adviser to the head of the Division, and a strong permanent staff of economists.

The problem is not the goal of an economically sophisticated antitrust policy, but its implementation. A division charged with the enforcement of a statute must of course be directed and largely staffed by lawyers. Unless there are substantial incentives to the staff to utilize economics—whether by central direction, or vastly more powerfully, by demonstrated assistance in winning cases—the non-lawyer will often be viewed by the lawyers as a mysteriously necessary obstacle to smooth operations. The Assistant Attorney General will have succeeded in making a truly major contribution to antitrust policy if he establishes the relevance of economic knowledge.

B. The Development of Criteria for Classes of Cases (Guidelines)

When the Antitrust Division is confronted by a large number of similar cases—and it must now be scanning many hundreds of mergers each year—it will inevitably have to guide the numerous men who pass individual cases. The question is not whether to have criteria or guidelines, but how to arrive at them.

We believe, for reasons we discuss below, that the present merger guidelines are questionable in important respects. Here we consider the procedures for formulating guidelines.

A set of rules for a class of cases will be desirable only if two conditions are fulfilled:

1. There are a large number of uncontroversial, easily identified cases. If there are not, the rules give little help to either business or the Division.

2. Controversial or objectionable cases cannot be repackaged to avoid scrutiny.

The way to determine whether mergers, for example, meet these conditions is to examine a large number of them in the light of legal and economic knowledge. The Antitrust Division will perform this task vastly better if it uses the large amount of professional expertise available outside the Division. We therefore recommend that the Division have semi-public conferences to explore difficult areas of policy, inviting legal and economic experts to propose or discuss guidelines. Some members of the task force would prefer to have formal notice and public hearings in establishing rules. If rules are adopted, a periodic review of them by the same procedure will be a useful method of conferring flexibility upon them. A specific application of this method is proposed below for mergers.

C. The Role of the Federal Trade Commission

No review of antitrust policy would be complete that ignored the Federal Trade Commission, which is charged with enforcement

among other statutes, the Clayton Act, which Section 2, the Robinson-Patman Amendment, and Section 7, prohibiting mergers and acquisitions that may substantially lessen competition, are particularly important; and the Federal Trade Commission Act, whose operative provision, Section 5, forbids "unfair or deceptive acts or practices", a term that has been interpreted to embrace even

more than the vast area of anticompetitive behavior proscribed by the Sherman Clayton Acts, as well as consumer fraud and some "immoral" sales methods such as lotteries. As is evident, the Commission's jurisdiction largely overlaps that of the Antitrust Division.

In its antitrust work, the FTC has concentrated on price discrimination, on practices believed to oppress or coerce small dealers, and on mergers, especially vertical and conglomerate, and usually in industries which by long-established understanding with the Antitrust Division have been assigned as the Commission's sphere of primary competence.

Unhappily, little that the Commission undertakes in the antitrust area can be defended in terms of the objective of maintaining and strengthening a competitive economy. Consider price discrimination. There is now an impressive body of literature arguing the improbability that a profit-maximizing seller, even one with monopoly power, would or could use below cost selling to monopolize additional markets. Yet, not only has the Commission continued to bring predatory price discrimination cases, but the alleged danger of predatory pricing remains a principal prop of its vertical and conglomerate antimerger cases. As for "secondary line" discrimination (that is, giving discounts to some dealers or distributors but not to others who compete with them), the Commission has never attempted to differentiate those cases (if there are any) in which a monopolistic buyer is able to extract unjustified price concessions from his suppliers to the prejudice of his competitors from those in which discrimination is employed by oligopolistic sellers who wish to cut prices secretly,—and should be encouraged to do so—and those in which price differences (which the Commission tends to equate, erroneously, with discriminations) are not, in fact, discriminatory. Over the last eight years the Commission, often under the prodding of reviewing courts, has pulled some of the sting from enforcement of the Robinson-Patman against secondary-line discrimination. It has demanded somewhat stronger proof of competitive injury; the meeting-competition and cost-justification defenses have been rendered meaningful; and the provisions of the Act relating to advertising allowances and brokerage payments are, in general, no longer used to compel sellers to compensate for services that are not economically beneficial to the seller (such as advertising by tiny retail outlets or brokerage when a broker's services can be dispensed with). Although the retreat from *per se* rules against secondary-line discrimination has led to a general diminution of enforcement activity by the FTC (private suits continue, of course, and are discussed later) the Commission still brings many cases that impair, rather than promote, competition and efficiency. For example, the Commission has in recent years waged vigorous war against "functional discounts", which are discounts offered to middlemen who perform certain distributive functions (such as warehousing) that other middlemen, who are not given the discounts, do not perform. Moreover, as explained later in this Report, we can conceive of no case of discrimination in which the Sherman Act would not provide an adequate remedy—adequate, that is, to protect the interest in maintaining an effectively competitive economy—and so we view Robinson-Patman enforcement as inherently likely to be pushed beyond proper limits.

The efforts of the Commission to protect small dealers from allegedly unfair and coercive business practices constitute a dark chapter in the Commission's history. Much of this enforcement activity does not eventuate in formal proceedings. What happens is that a dealer who is terminated for whatever reason, is likely to complain to the Commission, knowing that the relevant Commission staff is well disposed toward "small busi-

ness". The staff uses the threat of an FTC proceeding to get the supplier to reinstate the dealer, and if threats fail—usually they succeed the FTC may file a complaint enjoining the supplier with having cut off the dealer because he was a price cutter, or for some other nefarious reason. Our impression, in sum, is that the Commission, especially at the informal level, has evolved an effective law of dealer protection that is unrelated and often contrary to the objectives of the antitrust laws. The Commission is supported in this endeavor by the Supreme Court's rulings that Section 5 of the FTC Act empowers the Commission to suppress practices that resemble antitrust violations.

With respect to the Commission's enforcement policy in the merger field, it is illuminating to compare the recent statements of Commission merger policy with the Department of Justice Merger Guidelines, discussed elsewhere in this Report. The Commission is even more severe. Unlike the Department, it attaches a good deal of significance to the absolute size (independent of market share) of merging firms; to the alleged power that large firms have over small; and to the dangers of "price squeezes".

It will, for example, challenge virtually any acquisition by a cement producer of a ready-mix concrete company, virtually any substantial acquisition by a large food chain, etc. The Merger Guidelines are models of restraint compared to those promulgated by the Commission, which are as hard on economic theory as on mergers.

We conclude that substantial retrenchment by the Commission in the antitrust field is highly desirable. In addition to retrenchment (at least by stopping the increase of the Commission's appropriations), its resources devoted to regulating competition might be redeployed. The two principal possibilities are (1) consumer protection, and (2) economic studies utilizing the very broad fact-gathering powers vested in the Commission by its enabling legislation. Unhappily, either route could be followed in a way that endangered competition. An incompetent economic study can be influential on policy makers—witness the influential 1948 FTC study which erroneously suggested that concentration was on the rise in American industry. Overzealous enforcement of consumer-protection legislation can also have errant results. We note that the application of consumer-protection law is almost always invoked not by consumers but by competitors, whose interest lies in protecting their market, not in giving consumers full information; and that elaborate requirements relating to packaging, safety, etc. can curtail consumer choice, limit competition, reduce the consumer's incentive to exercise care, and—what is most serious—impose substantial costs on society.

The Federal Trade Commission urgently needs a basic reform, but this need will be difficult to fulfill. Quite apart from the fact that there are no vacancies on the Commission, any dramatic or far-reaching Presidential-inspired reforms would run up against the long tradition of regarding the independent agencies in general—and the FTC in particular—as "arms of the Congress." That has at times meant an office of economic opportunity for Congressmen; more important, it means that a strong showing of Presidential interest in the operations of the Commission will not be welcome on the Hill.

Perhaps the best short-run path of improvement runs through the offices of the Attorney General and the Assistant Attorney General in charge of Antitrust. Since the jurisdictions of the Commission and of the Antitrust Division are so largely overlapping, no one could object to the establishment between the Commission and the Division of close liaison at the highest levels. Indeed, it is something of a wonder (though explicable in terms of bureaucratic rivalry) that such

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There has been wholly lacking heretofore; the coordination between the agencies is at very low levels, and consists largely of haggling over who shall sue in cases where both agencies are interested. Especially at the beginning of a new Administration, it should be quite feasible, as well as wholly appropriate, for the Attorney General and Assistant Attorney General to establish a close cooperative relationship with the Chairman of the Commission. We think it likely that the Commission will pay some heed to the Department's views, if forcefully expressed, on antitrust and trade-regulation policy.

III. Recommended changes in antitrust policies

The general policies of the Antitrust Division are profoundly good, and we propose no major change in its emphasis or directions of policy. In fact, the main thrust of the following recommendations is that certain recent developments of policy or doctrine should not be allowed to divert the agency from its basic task of striking down conspiracies and mergers in restraint of trade.

A. Price Fixing

The price-fixing cases of the Antitrust Division are its bread and butter, and understandably its staff would prefer more cake. We emphasize the great economic and social importance of continued, vigilant, aggressive seeking-out and conviction of conventional price-fixers. Every victory weakens the efficiency of undetected collusion in that area of economic life. We strongly recommend the bringing of a series of strategic cases against regional conspiracies, which we believe to be numerous and economically important.

B. Concentration and Oligopoly

Only—the industry composed of a number of independent enterprises—subtly presents the most difficult problems in a policy for competition. The difficulties arise because of a combination of three circumstances. The first is *factual*: there are many important industries in our economy whose structure is oligopolistic—how large a number depends upon what a "small number of firms" means. The second is *interpretive*: the economists have not succeeded in fully identifying the characteristics of an industry which determine whether it will behave competitively or monopolistically. The third is the matter of *action*: if firms in an oligopolistic industry are convicted of collusive behavior, must one press for a remedy so radical as dissolution in order to stop future repetitions of the offense? (And should the standards of permissible concentration be wholly different for pending mergers than for established enterprises?)

The circumstances which determine whether or not the firms in an oligopolistic industry will usually behave more or less competitively (seeking by independent actions to improve their individual profits at the cost of rivals' profits, with the eventual general erosion of unusual profits) are partly known:

1. The easier (quicker and cheaper) new firms can enter the industry, the smaller and more short lived will be the monopolistic restrictions.

2. The more elastic the demand for the product of the oligopolistic industry the less the restraint from restrictions of output below the competitive level, and hence the less the inducements to act collusively. This in turn usually depends upon what alternative products the buyers may turn to.

3. The larger the effective number of firms in the industry, the greater the probability of collusive behavior (collusion increases in expense (increasing probability of detection) as numbers increase. However, a given number of firms is more likely to result in collusion, the more concentrated is production in the hands of a few firms. If we correct for this and take the effective number of rivals to be

the number of rivals of equal size which would produce the same competitive situation as the firms (not of equal size) actually in the industry, the effective number may be very roughly estimated at twice the number there would be if all firms were as large as the largest in the industry.

That is, if the largest firm has $\frac{1}{3}$ of the industry's output and the remaining firms fall off in size regularly, the effective number of firms is of the order of magnitude of 10. By this is meant that the concentration in the industry is equivalent to what would exist if there were 10 firms of equal size.

There are other influences which probably but less certainly affect the probability of competitive behavior. One of these is the size of buyers: larger buyers, for a variety of reasons including possibility of backward integration, make for more competitive prices.

Numerous statistical studies have been made of the relationship between concentration and rates of return on investment, and these studies generally yield positive but loose relationships: concentration is not a major determinant of differences among industries in profitability, although it may sometimes be a significant factor. It appears also to be true that somewhere between five and ten effective rivals (i.e., largest firm with a share of $\frac{1}{5}$ to $\frac{1}{10}$) are usually enough to insure substantial elimination of the influence of concentration upon profitability.

Concern with oligopoly has led to proposals to use the antitrust laws (perhaps amended) to deconcentrate highly oligopolistic industries by dissolving their leading firms. We cannot endorse these proposals on the basis of existing knowledge. As indicated, the correlation between concentration and profitability is weak, and many factors besides the number of firms in a market appear to be relevant to the competitiveness of their behavior. While a flat condemnation of oligopoly thus seems to us unwise, we commend to the Antitrust Division a policy of strict and unrelenting scrutiny of the highly oligopolistic industries. If, in any of these industries, pricing is found after careful investigation to be substantially noncompetitive, the Division will have a clear basis for proceeding against the leading firms under Section 1. Collusion that can be incontrovertibly inferred from behavior (such as persistent, stable price discrimination in the economist's sense) should not bring immunity from the Sherman Act, and we are confident that structural remedies will be sanctioned by the courts in cases where, due to number of firms and the other conditions of the market, lesser remedies are likely to be unavailing. In assessing the gain from such structural remedies, account should be taken of any reduction in efficiency which the remedy entails.

The concern with oligopoly is also quite visible in the Department of Justice's most recent innovation, the Merger Guidelines, to which we now turn.

C. Mergers and the Guidelines

The present merger Guidelines impose stringent restrictions upon the relative sizes permitted to companies which desire to merge. The impact of these percentages is reinforced by a definition of the market (within which shares of companies are reckoned) so loose and unprofessional as to be positively embarrassing. We propose to reverse this emphasis: not to tell companies which mergers are forbidden, but which mergers are permitted. We are persuaded that this orientation better serves the interests of both business and the Antitrust Division. Before we turn to the methods by which more appropriate Guidelines for mergers are achievable, we shall briefly discuss the present Guidelines, and indicate our reasons for dissatisfaction with them in their present orientation.

Market Definition. The delineation of a relevant market within which to appraise the lawfulness of a merger is crucial, for if the market is drawn narrowly enough, virtually any merger can be made to seem monopolistic in its effects. Unfortunately, as they are presently drafted the Guidelines seem to invite a substantial degree of market gerrymandering, especially in delineating regional or local markets. The Guidelines' test of whether a product is sold in less than a national market is loose. Any group of competing sellers in the industry is a relevant market, unless the defendant can show that there is no "economic barrier" preventing other sellers from selling in the particular area. Such a barrier may consist of freight costs, customer inconvenience, customer preference for the brands presently sold in the area, or the absence of good distribution facilities.

This is a misleading test. An industry may be riddled with the kind of "barriers" cited in the Guidelines and yet still not contain any meaningful local markets. An example will illustrate. Assume that the price of steel bars is \$2 in Minnesota and \$1.60 in Chicago, and the cost of shipping the bars from Chicago to Minnesota is 41 cents. On these facts, it is plain that the Minnesota sellers could not raise their price significantly without immediately losing their business to the Chicago sellers. Minnesota is thus not a meaningful local market even though, at the existing price, freight costs do impose an effective economic barrier against the Minnesota sellers. Moreover, additional firms will establish production or distribution facilities in Minnesota if it becomes profitable to do so. The same analysis can be extended to the other barriers discussed in the Guidelines.

In criticizing the test of "economic barrier," we do not mean to deny the difficulty of devising rules of market definition that will be at the same time simple and sensible. This is most probably not an area in which Guidelines provide a useful enforcement tool. If there are to be Guidelines, though, they should at least not misstate the applicable economic theory. It would, accordingly, be a decided improvement if the Guidelines were revised (at a minimum) to explain that a distant seller of a product must be included in the local market if a modest price increase in the local area—a price increase unrelated to his costs—would bring him in forthwith.

Horizontal Mergers. The provisions of the Guidelines governing horizontal mergers—that is, mergers between direct competitors—are extraordinarily strict. If a market is "highly concentrated" (defined as where the 4 largest firms account for at least 75 percent of the sales in the market), then a merger between two firms, each of which has a 4 percent market share, will be challenged; and if the acquiring firm has a share as large as 15 percent, then the acquired firm need have only a 1 percent share for the merger to be challenged. Different levels of permissible size are stated for less concentrated industries, and some account is taken of the trend of concentration.

We agree with the basic premise of the horizontal-merger provisions of the Guidelines that market-share percentages are the appropriate touchstone of illegality for such mergers. We would favor levels of concentration modestly lower than those now used (but differently structured), with the purposes of (1) allowing all mergers below the Guidelines levels, and (2) not prohibiting, but reviewing, those above the critical level, with an implied probability that the more a proposed merger lies above the level of automatic approval, the less the probability of its acceptance. We discuss below the procedure that should be followed better to utilize existing knowledge in fashioning the Guidelines.

Vertical Mergers. A merger that involves the acquisition not of a competitor but of a

mer or a supplier is a vertical merger, the present Guidelines contain strict provisions limiting such mergers. For example, if the supplying firm in the merger has a 10 percent share of its market and the purchasing firm has 6 percent of the purchases in that market, the merger will be challenged.

Our task force is of one mind on the undesirability of an extensive and vigorous policy against vertical mergers: vertical integration has not been shown to be presumptively noncompetitive and the Guidelines err in so treating it. Within this area of agreement there are two positions around which the task force members cluster.

The one position asserts that many, and perhaps most, vertical mergers which do not have direct horizontal effects are innocuous, but that in certain situations a vertical merger will have anti-competitive effects. These situations include: increases in the capital or other requirements for an integrated firm may reduce the possibility of new entry; or price discrimination may be implemented when a monopolist integrates forward or backward. A showing that an anti-competitive effect of these sorts exists is essential before a vertical merger is challenged.

The other position denies that a vertical merger has the potentiality for economic harm in the absence of horizontal effects. To some of our members, it is wholly implausible that vertical integration places entering firms at a disadvantage. A seller who fails to minimize his input and distribution costs will be undersold by his competitors; he cannot afford to sell to or buy from an affiliate if there are more efficient native means of supply and distribution available to his competitors (and to him). Even if the seller is a monopolist, the desire to maximize profits will lead him to seek the most efficient methods of supply and distribution, and there will be ample opportunities for non-affiliated suppliers and outlets to compete for his patronage. Except in the case of the monopolist who cannot discriminate in price effectively without control of his outlets, vertical integration will be initiated and maintained only if and so long as it is justified by the cost savings it permits. It is not a method of extending monopoly power.

The two positions coalesce on one policy conclusion: vertical mergers should not be forbidden as a class.

The Conglomerate Merger. The large conglomerate enterprise with an aggressive acquisition policy has only recently become prominent and newsworthy. . . .

Antitrust law has seemed to some a convenient weapon with which to attack large conglomerate mergers. If one interprets "elimination of potential competition," "reciprocity" and "foreclosure" as threats to competition, one can always bring and usually win a case against the merger of two large companies, however diverse their activities may be. These are often makeweights. The economic threat to competition from reciprocity (reciprocal buying arrangements) is either small or nonexistent: monopoly power in one commodity is not effectively exploited by manipulating the price of an unrelated commodity. The argument advanced against the simplistic treatment of vertical mergers—essentially that one cannot use the same monopoly power twice—also challenges the fears of reciprocity.

Potential competition, on the contrary, can be a decisive limitation on the exercise of market power, and a merger which eliminates an imminent new competitor is anti-competitive. If entry into a field is relatively easy, however, there are a vast number of potential entrants and the elimination of one or a few has no effect. If entry is difficult, and only a select few firms are capa-

ble of entry and on the record likely to enter, their independence should be preserved. The identity of potential entrants should not be established by introspection. If the producer of X is truly a likely entrant into the manufacture of Y, the likelihood will have been revealed and confirmed by entrance into Y of other producers of X (here or abroad), or by the entrance of the firm into markets very similar to Y in enumerable respects.

We seriously doubt that the Antitrust Division should embark upon an active program of challenging conglomerate enterprises on the basis of nebulous fears about size and economic power. These fears should be either confirmed or dissipated, and an important contribution would be made to this resolution by an early conference on the subject. If there is a genuine securities market problem, probably new legislation is necessary. If there is a real political threat in giant mergers, then the critical dimension should be estimated. If there is no threat, the fears entertained by critics of the conglomerate enterprises should be allayed. Vigorous action on the basis of our present knowledge is not defensible.

The central task of the Antitrust Division is to preserve competition in the American economy. This is a splendid and challenging task and deserves and requires the full resources of the Division. We shall be much the losers if we compromise the discharge of this central task by burdening the Division also with tasks such as the combatting of organized crime or the achievement of general political goals.

The Use of Conferences. We have proposed that conferences be used to revise the Guidelines and to identify the problems, if any, created by the large conglomerate enterprise. The conference will allow the Antitrust Division to utilize the expertise and wide factual knowledge of economists, lawyers, securities analysts, and other groups without the laborious machinery of formal hearings. We strongly recommend that before such conferences are held, leading students and exponents of particular positions be asked to prepare position statements which present explicit and specific theories and evidence. Then the conference members will have specific questions to address and specific views to combat or support.

D. Antitrust Sanctions

The cutting edge of law is not the abstract statement of a legal duty but the sanction provided for its nonperformance, and that is true of the antitrust laws as of other systems of legal obligation. It is essential that those laws clearly and accurately define and forbid the practices that impair competition and efficiency but it is equally essential that the sanction for violation be effective in compelling compliance and with a minimum of undesirable side effects.

In testing the antitrust sanctions by this standard, it will be helpful to distinguish two purposes of sanctions: that of preventing (or, if it has already occurred, undoing) a specific violation; and that of deterring violations that might not always be detected.

Sanctions of the first type—remedial sanctions—suffice where there is no problem of detection (e.g., in the case of an illegal merger). But take the case of price-fixing. Price-fixing conspiracies can be, and one suspects are, successfully concealed. A sanction that merely prevented the continuation of the conspiracy, such as an injunction, or one that merely restored the losses of the injured consumers, such as ordinary damages, would in these circumstances probably be insufficient. For in deciding whether to comply with the law, a seller would discount the very modest (or negligible) injury to him if his participation in a price-fixing conspiracy was detected, and he was required to stop and to pay actual damages, by the consider-

able probability that he would escape detection altogether; and he could conclude that he had little to lose by participating. That is why punishment by fine or imprisonment is an appropriate sanction for illegal price-fixing; it provides deterrence, as the purely remedial sanction does not.

But the deterrent sanction in antitrust is weak. A price fixer can be imprisoned and fined but prison terms are almost never imposed in price-fixing cases and when they are, they are nominal in length; and the maximum fine of \$50,000 will deter only a very small corporation. The possibility of a private treble-damage suit doubtless provides additional deterrent effect, but there are serious limitations: judges are reluctant to authorize damage awards that seriously hurt a company; damages are difficult to prove in price-fixing cases; and most important, the injury caused by a price-fixing conspiracy is often so widely diffused (for example, among millions of consumers) that no one has an incentive to bring a suit. The government itself can sue for damages only when it was the victim of the unlawful conspiracy.

If concealable offenses under the antitrust laws are to be effectively deterred, either the resources devoted to the detection of such offenses must be vastly augmented—and there are obvious limitations to this route—or the fines must be increased to a point where they will give even the large corporation considerable pause before participating in (or condoning its officers' individual participation in) an illegal conspiracy. Precedent for much more severe sanctions can be found abroad. The European Economic Community, for example, may impose penalties of up to \$1,000,000, or, in the case of willful violations, up to 10 percent of annual sales. We have not attempted to determine the appropriate level of antitrust fines, but we urge the Department of Justice to accord high priority in its legislative program to the upward revision of these penalties.

The creation of a more realistic scheme of antitrust fines would enable a long-overdue reexamination of the punitive aspects of the private antitrust suit. It is anomalous that private plaintiffs who have done nothing to uncover or prove an antitrust violation (the usual case) should be permitted to claim treble damages on the basis of a judgment obtained by the Antitrust Division. In such circumstances, the excess over actual damages and costs represents a pure windfall to the private plaintiff. Today, one can defend this arrangement on the ground that it furnishes an element of added deterrence which is necessary in light of the inadequacy of the existing criminal fines. But that ground would be removed if the fines were revised to a more appropriate level; and a more rational scheme of deterrence would become feasible. We are also deeply concerned that private treble damage suits provide undesirable opportunities for harassment and the furtherance of a variety of anticompetitive practices.

With regard to remedial sanctions, the principal question involves the undesirable side effects that frequently accompany a poorly formulated decree. Ideally—and it is an attainable ideal—an antitrust decree should be a "one shot" affair: dissolving the monopoly, or divesting the acquired assets, or terminating the basing-point system, etc. The antitrust laws were never intended to be a system of continuing regulation. Antitrust policy has as its basic principle the preservation of a competitive environment within which individual enterprises are free from continuing supervision. When a decree is in effect, "Let us return to the court, or give the power to the Antitrust Division, to judge the propriety of various behavior of the defendant for years to come," one can be sure that the suit has failed in its purpose of restoring competitive conditions. Nor is

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Department equipped to function as a regulatory agency, and it is not likely to escape that common pitfall of economic regulation, the suppression of competition. Nonetheless, such decrees are frequently entered, especially by consent of the parties in cases where the Department (or the Federal Trade Commission, to which these remarks apply with equal, if not greater, force) is unsure of its litigation prospects and wishes to salvage something from the investment of enforcement resources.

For the future, we urge that the Department adopt a firm policy of not proposing or accepting decrees that envisage a continuing, regulatory relationship with the defendant. A correlative policy that we suggest is that every decree contain a definite—and near—termination date, ordinarily no more than 10 years from the date the decree is entered. Such a principle would compel the Department to devise decrees that restore competition rather than establish regulation, as well as assure that decrees do not remain in effect long after the relevant industrial conditions have changed (such as with the 1920 decree against the meat packers).

Little is known of the extent to which a large number of past decrees are still operative, and if operative, of any real value in protecting competition. We recommend, therefore, some such procedure as this in dealing with outstanding decrees:

1. The past decrees still running should be compiled, and the types and duration of prescribed conduct summarized.
2. The current relevance of the decrees, or at least those running against large industries, should be examined—presumably by the economics section of the Antitrust Division.
3. The older (say 25 years and over) and obsolete younger decrees should be vacated.

E. Recommended Changes in Antitrust Statutes

Several legislative reforms could improve substantially the functioning of the antitrust laws. We have recommended above a substantial increase in the maximum level of fines. In addition, we recommend immediate repeal of the Expediting Act. The low quality of many Supreme Court antitrust opinions can be traced in no small measure to the fact that direct appeal frequently requires the Supreme Court to pass on an extensive record without the benefit of the winnowing and focusing process involved in an intermediate appeal. The Supreme Court itself has noted that direct appeal is unsatisfactory. If repeal is politically impossible, then an amendment that would drastically limit the number of direct appeals would be desirable.

The Webb-Pomerene Act should also be repealed. The creation of cartels in foreign commerce is antithetical to the underlying theory of the Sherman Act. The danger that exempted cooperation between competitors in the export field will lead to illegal cooperation at home is too great to be viewed as merely a potential abuse. Nothing in U.S. domestic competition policy or foreign economic policy warrants the retention of this outmoded approach to international competition.

On the agenda for long-term legislative reform must be the Robinson-Patman Act. The Act leads to rigidity in distribution patterns and to uniform, inflexible pricing. In industries with few sellers, price reductions are more likely to be made if they can be made covertly. Such limited reductions often lead over time to generally lower prices. Thus, a prohibition against price discrimination may preclude the kind of competition that is most likely to lead to lower prices in oligopolistic industries. We view the Federal Trade Commission's tendency in recent times to relax the enforcement of the Act as a desirable but, so long as private treble damage actions are available, an inadequate reform.

In reforming the Robinson-Patman Act, two kinds of amendment are desirable. First, the general prohibition against price discrimination in Section 2(a) should be made more supple by broadening the meaning of competition and cost justification defenses so as to make them more readily available for sellers whose price differentials do not stem from a predatory purpose and do not injure competition in the market place (as opposed to disadvantaging individual firms. Second, the more absolutist brokerage, payments and services prohibitions of subsections (c), (d) and (e) should be repealed while making clear that the standards of amended subsection (a) remain applicable to practices that would previously have been treated under those repealed subsections. The Task Force recognizes the political support that the Robinson-Patman Act retains in some quarters and the danger that an attempt to amend the Act might give particular interests an opportunity to add even more restrictive provisions. As a consequence some of our members view amendment of the Act as a long-term, albeit important, reform others wish to leave it alone.

THE WHITE HOUSE

The ITT Anti-Trust Decision

In the thousands of pages of testimony and analysis regarding the ITT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution from a subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation.

That charge is totally without foundation:

-- The President originally acted in the case because he wanted to avoid a Supreme Court ruling that would permit antitrust suits to be brought against large American companies simply on the basis of their size. He did not direct the settlement or participate in the settlement negotiations directly or indirectly. The only action taken by the President was a telephoned instruction on April 19, 1971 to drop a pending appeal in one of the ITT cases. He rescinded that instruction two days later.

-- The actual settlement of the ITT case, while avoiding a Supreme Court ruling, caused the corporation to undertake the largest single divestiture in corporate history. The company was forced to divest itself of subsidiaries with some \$1 billion in annual sales, and its acquisitions were restricted for a period of 10 years.

-- The President was unaware of any commitment by ITT to make a contribution toward expenses of the Republican National Convention at the time he took action on the antitrust case. In fact, the President's antitrust actions took place entirely in April of 1971 -- several weeks before the ITT pledge was even made.

I. President's Interest in Anti-Trust Policy

Mr. Nixon made it clear during his 1968 campaign for the Presidency that he stood for an antitrust policy which would balance the goals of free competition in the marketplace against the avoidance of unnecessary government interference with free enterprise. One of Mr. Nixon's major antitrust concerns in that campaign was the Government's treatment of conglomerate mergers. Conglomerates had become an important factor in the American economy during the 1960's, and despite

public fears that they were threatening free competition in the marketplace, the administrations of those years -- in Mr. Nixon's opinion -- had not been clear in their attitude toward them. In one of his 1968 campaign books, Nixon on the Issues, in which he put forward in summary form his conclusions about national and international issues, Mr. Nixon expressed his dissatisfaction with existing conglomerate policies:

"The Department of Justice has recently proposed guidelines for 'conglomerates' but the guidelines have not provided any substantial criteria on which businessmen can safely depend. Moreover, there is the problem of unsettled case law on the question. My administration will make a real effort, and a successful one, I believe, to clarify this entire 'conglomerate' situation..."

To help resolve the issues involved, Mr. Nixon during his campaign appointed a Task Force on Productivity and Competition, headed by Professor George Stigler of the University of Chicago and including several eminent academicians. The task force presented its report to the newly inaugurated President on February 18, 1969. The group recognized public fears that conglomerates posed a "threat of sheer bigness" but said these fears were "nebulous" and should not be converted into an aggressive antitrust policy on the basis of knowledge then available. "We strongly recommend," stated the report, "that the Department (of Justice) decline to undertake a program of action against conglomerate enterprises..."

A similar view was set forth by many outside the Government. In an article in Fortune in September of 1969, Robert Bork, then a professor of antitrust law at the Yale Law School, attacked the policy of antitrust enforcement against conglomerates that he thought was emerging at the Justice Department. He noted that unless conglomerates mergers were involved in horizontal price-fixing within an industry, there was no economic foundation for believing that they were anti-competitive. He also noted that "The campaign against conglomerate mergers is launched in the teeth of the conclusion reached by the task force that President Nixon himself appointed to study and report on antitrust policy."

A second major concern of the President and his advisors was their fear that the ability of U. S. companies to compete in the world market might be threatened by antitrust actions against conglomerates. The United States faced a shrinking balance of trade surplus and the President and many of his advisors felt that U. S. multi-national companies could play an important role in improving the balance.

The President feared that antitrust action against those companies which was based upon something other than a clear restraint of trade would render them less able to compete with the government-sheltered and sponsored industrial giants.

REMARKS BY MR. HAROLD S. GENEEN, CHAIRMAN AND PRESIDENT
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, AT
1969 ANNUAL MEETING OF ITS STOCKHOLDERS -- SHERATON-CADILLAC
HOTEL, DETROIT, MICHIGAN ON JUNE 26, AT 2 P. M.

Ladies and Gentlemen:

On behalf of the Board of Directors and Officers I want to welcome
you to your 49th Annual Meeting.

This is our first meeting to be held in Detroit which reflects our
policy to bring ITT to the stockholders throughout the country's economic
and financial centers.

During the past 10 years we have brought our Annual Meeting to
Baltimore, San Francisco, New York, Boston, Philadelphia, Cleveland,
Los Angeles, Atlanta, Denver, and today -- Detroit.

Today's meeting also has a special historic significance for the
Company -- today's meeting is the first official meeting at the beginning
of its 50th Anniversary Year.

Turning back now to Detroit and the State of Michigan, this is an area
that has increasing significance to ITT. We are represented in the area
by 19 of our major divisions which provide a variety of services and more
than 20 product lines.

We are clients of Detroit's great banks and financial institutions and
major purchasers of its products. The annual dollar volume of our own
activities in this area alone would total well over \$100 million.

Among the better known of our activities in the Detroit area are:

Thompson Industries, suppliers to the automobile trade,...

These two reports, the Neal Report requested by President Johnson, and the Stigler Report requested by President Nixon deal with exactly the problem we are speaking of today. Each report represents the formal opinion of a distinguished group of economists and businessmen.

Each report concludes that there is no legal support for an attack on size as such and that Congress, armed with all of the information, facts, and opinions from hearing all sides, would be required to pass new legislation to do this.

The Stigler Report (which is the Nixon report) went even further to state that there was no dangerous concentration of industry in their opinion taking place and specifically warned against antitrust actions against large diversified companies on the basis of "nebulous fears of size and economic power."

Furthermore, the Stigler report warned against anti merger attacks on large companies which would have to be made through "a contrived interpretation of the Clayton Act.

Yet, what I have described to you is precisely what this report warned against and yet what we are literally experiencing not once, but possibly twice and three times.

Needless to say since our counsels are eminent, independent experts who say that we are legally correct and since the mergers we have sought have strong significance to our future and were arrived at openly and willingly by both parties on each case and based on the exchange of sound

3. Apparently, in June of 1969, Mr. Geneen sought to meet with President Nixon about certain financial and economic concerns of ITT, including, but not limited to, the antitrust suits. John N. Mitchell, for one, thought the meeting would be inappropriate because of ITT's legal involvement with the Department of Justice. The meeting was not scheduled.

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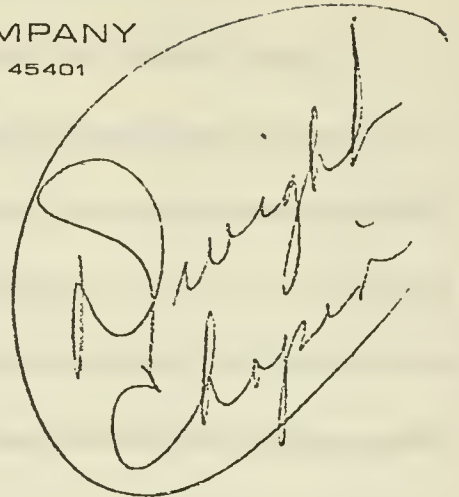
L. M. BERRY AND COMPANY

P. O. Box 6000 • Dayton, Ohio 45401

Area Code 513 298-4311

LOREN M. BERRY
Chairman of the Board

June 9, 1969



President Richard M. Nixon
The White House
Washington, D. C.

Dear President Nixon:

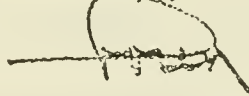
I am sending you herewith copy of a letter containing late information regarding matters of vital importance to our country both at home and abroad.

The letter, dated June 3rd, was written by Mr. Harold S. Geneen, President of International Telephone & Telegraph Corporation, to Secretary Maurice H. Stans, and sets forth vital information which I believe you would like to have. I note that Mr. Geneen has asked to see you in the hope that he can give you any further facts needed. I sincerely hope you can arrange such a meeting at an early date because I definitely feel that it would be a two-way street; namely, that you can be of real help to each other, both from a national and an international standpoint.

I want to thank you for a wonderful evening at your dinner party May 27th. It was a real pleasure for me to be there, also to see you looking fine.

Best regards and all good wishes.

As always,



Loren M. Berry

LMB/lm

Encl.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

320 PARK AVENUE

NEW YORK, N. Y. 10022

HAROLD S. GENEEN
CHAIRMAN AND PRESIDENT

June 3, 1969

The Honorable
Maurice H. Stans
Secretary of Commerce
14th and Constitution Avenues, N. W.
Washington, D. C. 20230

Dear Maury:

From the newspaper reports I can see the immense amount of globe-circling coverage you have been putting into some of the long-standing problems of the Department in an effort to get them cleared up promptly. I think your example bears out what all of us knew you would accomplish in a difficult public assignment.

Because of your own load I hesitate to raise any further problems with you, yet timing is of such importance that I would appreciate very much your reading the contents of this letter, and then perhaps I can talk to you briefly on the phone without disturbing your work schedule too much.

First, to put this in context, I write concerning a problem that involves national policy and also deeply involves our company and which, very importantly, comes under the jurisdiction of your Department.

The United States balance of payments situation is, in my opinion, probably the most difficult, long-standing problem that the nation faces and it will continue to be potentially the most dangerous and troublesome one that will be with us into the future as far as we can see.

Essentially, the payments problem is a balance of trade problem that primarily confronts the Department of Commerce for solution. Against this background, let me use our company as an example of the difficulties that any of us in this activity faces.

First, ITT has consistently brought back cash to the United States -- "net of everything" -- for the past 20 years.

The rate at which we are bringing this back has been doubling every five years.

2--

This year, 1969, ITT will bring back approximately \$200 million (net of everything).

At the pace we are moving, in the next four years we should bring home approximately \$1 billion (again net of everything). Yet there is a problem for any U. S. company in "bringing back the bacon" in this manner.

Let me recall my early days with the company ten years ago to explain. I had been in the company little more than 12 months when Cuba seized our telephone company in Havana which, at that time, represented about one-quarter of our total earnings. Despite the fact that Bob Murphy, then Undersecretary of State for Political Affairs, assured me that the U.S. Government would have the company back for our shareholders in 90 days, ten years have passed and Castro still runs Cuba and we still do not, of course, have our telephone company back. Nor has the telephone company been returned that was expropriated in Brazil (though on that one we received some compensation), and every morning I look for a headline about what will happen to our Peru Telephone Company, a pawn in the current problem in that country.

When we lost the Cuban Telephone Company, we lost a great deal of investor confidence at that time. The loss coupled with the fact that 80% of our earnings then came from overseas, although some 93% of our stockholders were (and are) U.S. citizens, gave us a tremendous problem. We decided then and there that it was necessary for us to establish a broad, firm U.S. base in order to continue to carry on foreign trade. This we have done, complying with all of the laws of the U.S., including those of Antitrust.

In short, Maury, in order for a U.S. company such as ours to be a "bacon winner" for you abroad and to be able to continue to contribute to the balance of payments account, we have found it is absolutely essential to our stockholders' confidence and support, to establish credit and raise money abroad-- to do all of the necessary things with which you are so familiar -- to have a large, strong domestic base. We put the requirement as approximately two-thirds domestic to one-third overseas earnings.

I think our record on balance of payments testifies to how well this system works, including the fact that any acquisitions we have made, we have taken overseas promptly to enhance both our positions abroad and to maintain our "bread winning" role.

3--

Now, as against this problem, we are running into a problem with the Antitrust Division of the Justice Department which is suing us on mergers we announced last year, and we are advised by counsel that this is being done on highly speculative and improper grounds. As a matter of fact, Mr. McLaren now candidly admits to us that he is really bringing suit because we are a "conglomerate" and because we are now a "big company" and that he will continue to do so using any pretext he can dream up. This policy of Mr. McLaren's is all the more difficult to understand because we have and are proceeding in compliance with the antitrust laws of the land as they have been interpreted by the legal profession and the courts for a great number of years, and in compliance with the guidelines laid down by the Justice Department. We are still assured, as I write, by our antitrust attorneys that the grounds on which these cases are being taken probably will not stand up in court.

This is reassuring to a degree, but the suit filed and the prospect of other suits are a severe deterrent to carrying out our plans, running the business daily and, most importantly, a major impediment to continuing our role as one of the leading foreign commerce companies of the United States.

Only last week we had a serious example of this negative impact abroad. We had a bond issue in the United Kingdom that was simply a flop. This was our first flop in 25 years of raising funds abroad and while there are many factors that have to be considered, certainly one that cannot be overlooked -- reflective of the antitrust policy -- was a press report, prominently placed in The Times of London, on the issue saying that "the U.S. Government was against ITT because it is a conglomerate". The European pickup of The Times story and the failure of the issue will not, to put it mildly, be helpful to us or to you.

The significance of the unwarranted and unjustified antitrust policy now appears in light of the responsibilities of your own Department in connection with the balance of payments effects in our activities abroad, as well as domestically.

Now, let's look at some additional facts.

1. There are in existence two outstanding reports on the economic effects of antitrust policy, and the role of the conglomerates is dealt with specifically. These reports were compiled by outstanding panels of economists, one at the request of former President Johnson, the other at the request of President Nixon. The first report is known as the Neal Report and was released last week by Mr. McLaren after repeated requests for its disclosure.

The report states very simply, in effect, that the suits contemplated against us are now supported by law and it recommends further a policy of antitrust enforcement that would not have provided a basis at all for the suit that was filed against our merger with Canteen.

The second report, known as the Stigler Report and compiled by an eminent panel of businessmen and economists, not only reiterates the main points of the Neal Report, but even more emphatically opposes the use of the Antitrust Division to curb mergers on the basis of "way-out" theories of "reciprocity", "potential competition", etc., except where clear evidence of illegality exists. The Stigler Report has not been released though it has been reported as a "secret Nixon Report" in the Washington Star, and reliable sources are quoting its contents in Washington.

2. In a discussion with Arthur Burns, I found that his general thoughts support the position that there is no sound basis for the unwarranted attack on conglomerates that is being waged.

3. In an informal discussion with David Kennedy, I found that his concerns are against "improper concentration within an industry" and not with conglomerates per se or because of size, a position also taken by the Neal and Stigler Reports.

In talking with several of the key Republican policy people in the Congress, including Senator Dirksen and Congressman Ford, I find they hold equally strong views against unjust attacks on conglomerates because of size per se or "fancy" theories of reciprocity which are untried in law and generally regarded as unsound.

Among the Government Departments which would be directly involved, it appears your Department would have a sharp and immediate interest. Of course, I don't know your detailed views on this subject, but I do have the impression that you were concerned about the aspect of "raiders" in the business world. As you know, this has also been the concern of Congressman Mills. As I am sure you are aware, we have never indulged in these "raiding tactics". On the contrary, all of our mergers have been jointly agreed to, they have been harmonious and the considerations have been represented by normal stock securities.

5--

It does appear, Maury, that the need for your support of large American foreign trade companies is very real. The need is to be allowed a domestic base from which to move with assurance in world-wide trade.

This, I think, is demonstrated by the fact that such acquisitions as we make are done freely, that they are paid for fairly, with proper securities. Most importantly, these kinds of acquisitions result not only in more efficiency domestically, but -- by carrying these activities abroad-- they increase the ability to expand balance of payments remittances.

It does seem that almost every one in Government who should be concerned with these matters is in agreement on one thing -- that a proper policy would recognize the care with which we have planned our activities in close compliance with the law, as well as the very real contributions we are making domestically in addition to remittances from abroad. I have said "almost every one". There are those, however, who seem to feel that the only proper course is one of harrassment and of punitive legal actions.

Since it appears we are to be the first at bat, there remains only this question -- "While there is still time, how can we do anything about this?"

I have asked to see the President in the hope that I can draw the facts to his attention.]

I can see no virtue in any discussion with Mr. McLaren or in turn with the Attorney General who either from conviction or commitment continues to express support of Mr. McLaren's actions.]

The purpose of this letter is to see if I can elicit your support based on the facts that I have outlined here to do two things:

1. See that the Stigler or Nixon Report is released officially. I believe it might have a healthy influence on this problem since it represents the Administration's best advice on policy solicited at the President's request.

6--

2. Possibly, since I feel this directly and indirectly affects your own responsibilities, that you request that there be an Administration review and reappraisal of these policies with all of these facts now brought to light. Sufficient differing policy, versus the current activities of the Justice Department in attacking conglomerate mergers on speculative grounds, has been expressed at high enough levels, as detailed above, to indicate that such a review would be in order.

I do want to point out that while this is essentially a broad policy issue, our company is directly and justifiably interested in the outcome.]

I would like to talk with you briefly on the phone, after you have read this, if I may have the opportunity.

Thank you for your courtesy and consideration.

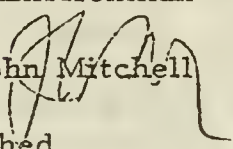
Sincerely,

A handwritten signature in cursive script, appearing to read "Harold", is centered below the "Sincerely," text.

THE ATTORNEY GENERAL
WASHINGTON

July 14, 1969

TO: John Ehrlichman

FROM: John Mitchell 

RE: Attached

As you may know, Mr. Geneen's company is involved in a number of antitrust suits with the Justice Department. Further, some of the companies in his conglomerate are represented by the Mudge firm. I would see no reason for the President to see Mr. Geneen unless he wants further review of the antitrust problems from him. Needless to say, the Geneen letter attached does not reflect accurately the legal position of the Justice Department in the antitrust suits.

It might be well to leave this matter with Maury Stans for a follow-up on the balance of payments matter.

July 16, 1969

Wednesday - 3:15 p.m.

MEMORANDUM FOR MR. PETER FLANIGAN

SUBJECT: Proposed Appointment with the President for
Harold Geneen of IT&T

In accordance with the recommendations that you set forth in your memorandum (attached), we have not scheduled an appointment for Harold Geneen of IT&T.]

Since you are familiar with all the matters relating to the subject matter, I would like to suggest that you talk to Bryce Harlow and see if it is agreeable with him for you to call Wilson and explain why it would be inappropriate for the President to see Geneen.

DWIGHT L. CHAPIN

DLC:ny

4. In March, 1971, the Solicitor General authorized an appeal to the Supreme Court from an adverse decision in the United States v. ITT (Grinnell) case because of practical difficulties in the future if the decision were left standing. The Solicitor General and his associates thought the case to be very hard; his chief deputy thought the government's chances of winning were minimal.

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UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : The Solicitor General

DATE: March 2, 1971

AKR FROM : A. Raymond Randolph, Jr.

SUBJECT: United States v. International Telephone & Telegraph
(D. Conn.)

I recommend appeal to the Supreme Court, although not on the primary basis set forth in the accompanying memorandum from the Antitrust Division.

Appeal is sought mainly on the ground that the district court erred in refusing to consider evidence */ of a trend toward concentration in the economy as a whole. Basically the theory is this: Section 7 of the Clayton Act forbids one corporation from acquiring another "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition . . ." The Court has held that "any section of the country" can mean the entire country, United States v. Pabst Brewing Co., 384 U.S. 546, and it should similarly hold that any line of commerce can mean the entire economy. The Court has also recognized that a trend toward concentration in a specific product market is relevant in determining whether a merger may have a substantial anticompetitive effect in that market. United States v. Von's Grocery Co.,

*/ Dr. Mueller's proposed testimony.

62-147-537-1

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384 U.S. 270, 277-278; id. 281 (White, J., concurring). Thus, a trend toward aggregate concentration in the entire economy should be considered as relevant in determining whether a merger violates Section 7.

The obvious question is relevant to what? To the effect of this merger on competition in the particular product markets or to the effect on competition in the entire economy? While it is far from clear in the memorandum, apparently Antitrust would answer "both." Thus, one theory is that with respect to the particular product markets involved in this merger, something less than the usual quantum of proof is needed to show that there may be substantial anticompetitive effects if, in addition to such proof, the government can show a trend in the economy toward increasing aggregate concentration (see p. 25, 2d ¶). The other theory is that this merger will increase aggregate concentration; that a considerable increase in aggregate concentration should be equated with a substantial lessening of competition under Section 7; that the general trend toward concentration supports this equation and must be considered in assessing the effects of an increase in concentration by a particular merger; and that the anticompetitive effects in Grinnell's product markets are a micro-illustration of the general results of greater concentration through conglomerate mergers. (See p. 5, 1st ¶.)

At the outset I should note that there is no serious problem about whether we properly raised these issues below. The Memorandum in support of Dr. Mueller's proposed testimony does seem to focus only on the first theory:

Consequently, such evidence [the trend] is relevant to the issues in this case in two respects. First, the specific anti-competitive consequences of this merger must be considered within the perspective of this merger trend. The result of placing this merger against that background is to require

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that greater judicial concern be given to demonstrated anticompetitive effects within specified lines of commerce, because of the additional impact upon competition in general. [p. 9]

But other statements do hint at the second theory also:

In addition; apart from its instant anticompetitive consequences, this merger must be viewed as one which would further and encourage the previously discussed trend toward increasing concentration. [Id.]

I

As to the first theory, I fail to see why it is at all necessary to argue that Section 7 should be construed so that "any line of commerce" means all lines of commerce. If the general trend toward concentration bears on how the merger will affect competition in, for example, the fire sprinkler system market, then the court should consider it -- and vice versa. But the interpretation of Section 7 has nothing to do with this.

However, rather than offering reasons why this trend is relevant the attached memorandum seems to proceed on the basis that it is sufficient to argue that Section 7 can mean "all lines of commerce": Congress itself deemed the evidence of a trend toward concentration relevant and that is enough. One obvious difficulty with this approach is that the legislative history in support of construing Section 7 to mean "all lines of commerce" is weak. Obviously in order to persuade the Court to accept this construction something more will have to be shown. And that something must consist of a demonstration of the pertinence of this trend with

respect to competition in the particular lines of commerce involved in the merger. Unfortunately such a demonstration has not been made and, frankly, I doubt whether one could be.

Moreover, even if Section 7 is interpreted as Antitrust urges, there is still the problem whether proof about aggregate concentration in the entire economy -- that is the trend toward such concentration -- assists proof with respect to particular product markets. If more than the trend itself is needed to show a lessening of competition in all lines of commerce, and if the other evidence is less than adequate to show this in a particular line of commerce, there is no apparent reason why some combination of the two shows a substantial diminution of competition within a particular product market, other than the bald and conclusory assertion that increases in aggregate concentration through conglomerate mergers must be stopped somehow. This seems to be little different from a case where we have introduced insufficient evidence of anticompetitive effects within the entire country and also within a specific geographical market. No one would contend that this nevertheless makes out a violation of Section 7 with respect to the specific market area. Yet the arguments in support of the proposed theory do essentially just that, although for lines of commerce rather than for sections of the country. Unless it can be shown how the trend increases the probable anticompetitive effects of the merger within the product markets, unless this nexus can be supplied, the proposed theory is baseless.

It must be remembered that the trend we seek to prove is a trend toward aggregate concentration, not market concentration. (Apparently most economists agree that there is no trend toward the latter.) As indicated above, there are, in my view, no grounds for arguing that this has an anticompetitive effect on a particular product market. To be sure, ITT is one of the largest conglomerates; it has been gobbling

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up companies in diverse industries in the past; and this past practice, together with the general trend in the economy toward increasing concentration, indicates that ITT will continue to follow the same course in the future. As ITT acquires more and more companies, the opportunities for reciprocal dealing brought about by the acquisition of Grinnell, while perhaps somewhat less than substantial at present, may intensify. If this were the theory, it would at least be understandable. But (a) the trend adds little, if anything, to the force of this argument, and (b) this is not the theory. The difficulty in considering the trend toward aggregate concentration with respect to effects within specific product markets is not so much in requiring courts to try to add apples with oranges. The fundamental problem is that we have given them no reason to even try to perform that task.

Perhaps this is why no satisfactory basis has been offered for explaining just how the trend toward concentration should be combined with other factors to allow a court to form an overall judgment about the case. (Of course, it is asserted, as indeed it must be, that the district court's failure to consider Dr. Mueller's testimony made a difference in the outcome [p. 25].) Obviously if one cannot show why certain evidence is relevant at all, it is impossible to say how much weight a court should give to such evidence in deciding the case before it.

II

The other theory of the case is that this merger has lessened competition in the entire economy -- all lines of commerce -- and that the trend toward aggregate concentration relates to this. One might ask how this could possibly help when there appears to be trouble enough in making out a case with respect to only a few lines of commerce. Actually it would be easier to show a violation of Section 7 under this theory for little more than the trend

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plus the size of the merging firms would have to be proved.

As noted earlier, the Court has held that a tendency toward increasing concentration in a product market is highly relevant. The reason is that, in the Court's view, an industry that tends toward oligopoly becomes less competitive. While a particular merger, as seen in isolation, may seem to push the industry toward oligopoly, it may be that other new firms have been entering so that the overall movement is in the opposite direction. Also, the concept of oligopoly itself necessitates looking at more than one firm; the actions of other firms in regard to their share of the market must therefore be considered. Thus, the trend toward concentration in the market is highly relevant.

The basic problem with using this approach with the entire economy is twofold. First, as noted above, the increase has been in aggregate concentration, not market concentration. (This is perhaps understandable in light of the fact that conglomerate mergers do not increase market concentration.) While there is substantial economic opinion that increases in market concentration do not decrease competition, there is an even more weighty line of authorities who contend that increases in aggregate concentration do not have any appreciable effect on competition. (Dr. Mueller, of course, does not agree.) Second, and more important, the trend in a product market has been treated by the Court as just one factor to be considered. But here, aside from the size of the merging firms, we have little else to offer.

Thus, if we ask the Court to assess the competitive effects of this merger on all lines of commerce, the question arises whether we can supply any meaningful guideposts. The Court has stated that "the purpose of delineating a line of commerce is to provide an adequate basis for measuring the effects of a given acquisition." United States v.

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Continental Can Co., 378 U.S. 441, 457. Surely the trend plus the size of the acquired firm cannot be enough. Suppose Grinnell, although relatively quite large, was not a leader or even close to a leader in its product markets and suppose also that the top four firms in that market held a significant combined share. It would seem that ITT's acquisition could in fact increase competition; at the least, competition would certainly not be decreased. Yet the merger certainly added to the trend toward aggregate concentration and under the proposed theory it would presumably ^{be a} violation of Section 7. However, one views the desirability of such acquisitions as a policy matter, the fact is that there was certainly no intention to forbid them under Section 7; indeed encouraging this kind of activity may have been part of the purpose of the statute. In short, if trend and size are the only relevant factors, this would mean simply that conglomerates cannot acquire relatively large firms. I don't think there's a ghost of a chance that the Supreme Court would buy such a nonselective and indiscriminate approach.

This brings me to the question how the evidence with respect to competition in Grinnell's product markets comes into play. One thing seems certain. The fact that we have failed to show a substantial lessening of competition within those markets -- assuming that the district court was correct -- cannot be fatal under the proposed theory. For if such a showing were required, then the theory itself would be mere surplusage. On the other hand, if, the proven effects of the merger in particular markets are intended to illustrate the general result of increased aggregate concentration, it seems quite damaging that these effects are somewhat less than substantial in the very product markets directly involved in the merger (again assuming the district court was correct in this regard.) There appears to be no satisfactory way out of this dilemma. Indeed, given this problem it is difficult to see why we

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should even address ourselves to the anticompetitive consequences within Grinnell's product lines.

Unfortunately I must conclude that neither theory comes even close to holding water. Quite frankly, we should not attempt to take a case to the Supreme Court on such a flimsy basis.]

However, it would be unwarranted to conclude from this that we have no weapons under Section 7 against conglomerate mergers. We of course still have the more traditional arguments with respect to entrenchment of a dominant firm, although these proved less than persuasive to the district court on the facts of this case. Another line of attack which at least seems more persuasive than the approach proposed here would be to argue that the acquisition of one of the top four leading firms in concentrated markets should be illegal because (a) the possibility that that firm will become further entrenched, thus making the market more rigid, and (b) even if this in itself might not be enough to show a substantial lessening of competition it should be considered as such because the acquisition of a more minor firm would have helped it to increase its share of the market, thus decreasing market concentration. Obviously the major argument against this is that we are not showing a lessening of competition, but rather the failure of the merger to be pro-competitive. Nevertheless I still believe that this line of argument is much more tenable than the theories expressed in the attached memorandum. */

Although I would thus not appeal on the basis of the theories discussed above, there are, however, two grounds on which I would recommend seeking Supreme

*/ Since we did not argue this below, I should think that we cannot now offer it to the Court.

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Court review. The first is with respect to the district court's finding that Grinnell is not a "dominant" firm in its product markets. This term has never been defined by the Court and here the district court supplied no definition. The meaning of the term is important because it has been thought that if a dominant firm becomes more entrenched by the merger this will substantially lessen competition. (See pp. 29-30 of the Antitrust memorandum.) The memorandum spells out in detail the arguments against the court's finding (pp. 29-33) and these seem quite persuasive.

I recognize of course that the district court went on to hold that even if Grinnell is a dominant firm the government's proof is nevertheless inadequate. On this score I think we can mount a strong attack against the court's findings with respect to the possibility of reciprocity. Again this seems to give rise to significant questions on which the Supreme Court has not yet spoken: e.g., whether it is enough to show that the structure resulting from the merger makes reciprocal dealing likely regardless of the acquiring firm's disavowals of following this practice; and whether the possibility of reciprocal dealing must entrench a dominant firm in order to be deemed substantially anticompetitive or whether that possibility standing alone is enough. See pp. 41-42 of Antitrust's memorandum.

In my view a win on either or both of these grounds will go a long way toward halting the trend toward conglomerate mergers and will certainly be a significant step in the direction that Mr. McLaren has indicated the Department of Justice should move.



Office of the Solicitor General
Washington, D.C. 20530

March 15, 1971

DMF:mch
60-149-037-1

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: United States v. International Telephone
and Telegraph Corporation (D. Conn.)

I recommend APPEAL.

This is the first of the government's conglomerate merger cases that has been decided. Since the beginning of his administration as head of the Antitrust Division, Assistant Attorney General McLaren consistently and repeatedly has taken the position that Section 7 of the Clayton Act reaches such mergers; in a 1969 speech the Attorney General suggested a similar belief. Three other conglomerate cases are pending before the district courts. Considering all the circumstances, we really have no choice but to seek Supreme Court review of this decision which, if left standing, would be a serious adverse precedent that probably would doom our remaining cases and would also make it extremely difficult to proceed against future conglomerate mergers.

The basic problem is developing effective theories upon which to challenge Judge Timbers' decision. The latter, unfortunately, is an able job, and at every turn we will be up against carefully drawn findings in which the judge's credibility determinations played an important part. It is vital that our appeal not involve a wholesale frontal attack on those findings; we must avoid presenting the case so that the appellee effectively could argue that "What the Government asks, in effect, is that we try the case de novo on the record, reject nearly all of the findings of the trial court, and substitute contrary findings of our own" (United States v. Yellow Cab Co., 338 U.S. 338, 340). We may have to challenge some of the findings--the fewer the better, of course--but basically our case for reversal must be that the district court applied the wrong legal standards in holding that this merger did not violate Section 7. Several theories are possible.

1. The most persuasive argument to me is that the nature of the large modern conglomerate enterprise necessarily carries with it a sufficiently serious likelihood of reciprocity that the effect of its acquisition of a major firm may be substantially to lessen competition in that firm's industry within the meaning of Section 7. Federal Trade Commission v. Consolidated Foods Corp., 380 U.S. 592, seemingly announced the rule that the acquisition "of a company that commands a substantial share of the market" (as Grinnell does here) violates Section 7 if it creates the "probability of reciprocal buying" (p. 600). The Court recognized that the "'mere possibility' of the

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prohibited restraint is not enough" (p. 598) and it relied heavily on the Commission's finding, solidly supported by clear proof, that the merger there created a real likelihood of reciprocal buying.

In the present case, on the other hand, the district court found expressly to the contrary. It ruled (mimeographed opinion 47-48) that "the substantial, credible evidence demonstrates that reciprocity and reciprocity effect is not likely to occur, even if the merger were to create the opportunity for reciprocal dealing, particularly in view of ITT's anti-reciprocity policy, implemented by the withholding of purchasing and sales data and the profit center organization of ITT" and that "the government has not sustained its burden of establishing either that the merger will create an opportunity for reciprocal dealing through a market structure conducive to such dealing, or that reciprocal dealing in fact is likely to occur even if the merger were to create an opportunity for it." It reached these conclusions on the basis of a comprehensive and careful analysis of the evidence, and its findings will be extremely difficult to overturn. Our best chance will be to argue that the findings rest upon an erroneous concept of what kind of showing the government must make to prove the "probability of reciprocal buying," and that the court has imposed too strict a standard upon us. The problem, of course, is that the proof we urge as sufficient may strike the Supreme Court as showing only a mere possibility, and not a probability, that the merger will substantially lessen competition. Although there is some support for our position in the recent White Consolidated decision (N.D. Ohio, February 24, 1971)--with its acceptance of the theory that a merger leading to "reciprocity effect" may involve a significant change in market structure--that decision was on an application for a preliminary injunction, and the court did not have before it the detailed record of the present case.

2. Antitrust also proposes that we stress the advantages that would accrue to Grinnell as a result of IT&T's ownership of Hartford Fire Insurance. The use of automatic sprinkler systems reduces fire insurance premiums; insurance brokers will point this fact out to their customers; and Hartford's brokers, who presumably are aware that Hartford is a member of the same corporate family as Grinnell, are hardly likely to be insensitive to the desirability of encouraging purchases from the latter. Moreover, insurance brokers apparently are an excellent source of business leads for sprinkler installation firms, and IT&T's ownership of both Hartford and Grinnell will give the latter an entrée not available to others in the business.

The district court rejected this theory because of findings which, in its view, eliminated the factual basis therefor. Here, too, we will have a hard time overturning the findings. More importantly, this theory is less attractive than the reciprocity approach for two reasons: (1) If we won on this ground, it would have no impact beyond this case and would not furnish an effective tool for challenging other conglomerate mergers. (2) It seems somewhat anomalous to be attacking the Grinnell acquisition because

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of the allegedly harmful effects that flow from IT&T's ownership of Hartford, when in another case we are simultaneously challenging IT&T's acquisition of that company.

3. Antitrust stresses the cumulative effects of reciprocity, the fire insurance company interlock and various other alleged competitive advantages of the merger for Grinnell, from which it concludes that the merger is likely to entrench Grinnell's dominant position in the automatic sprinkler business. It contends that such entrenchment condemns the merger under the rationale of Federal Trade Commission v. Procter & Gamble Co., 386 U.S. 568. The findings of the district court, however, seriously undercut this theory. In Procter & Gamble we had the advantage of Commission findings that established the factual foundation for the entrenchment theory, and it was not difficult for the Supreme Court to accept those findings and then to conclude that they supported the agency's conclusion of probable anticompetitive effect. In the present case, on the other hand, the district court's findings lead to the opposite conclusion. Particularly in dealing with the entrenchment theory, I think that our argument seems particularly vulnerable to the charge that we have shown only the possibility, but not the probability that the merger will cause competitive injury.

The district court's reliance upon its conclusion that Grinnell is not the dominant company in its industry may be vulnerable. In the first place, Grinnell is the largest firm, with 20-24 percent of the market, and if it is not the dominant firm (although I think it is), it certainly is a dominant one, and that should be enough. In any event, as long as the acquired firm is important and significant in the market, the entrenchment of its position due to a merger should suffice to condemn the merger under Section 7, whether or not it is considered dominant. But even if the district court is wrong in its dominance ruling, we still have to overcome the court's further finding that in any event the merger would not entrench Grinnell in the sprinkler market, and that is where our real problem on this branch of the case will be.

4. Finally, there is the theory that this merger is invalid because it furthers a trend toward economic concentration in the economy as a whole.

(a). The first facet of this theory is that amended Section 7 was intended to prohibit any merger that produces a significant increase in such concentration. This argument--which I understand Antitrust does not now propose to make--relies on the legislative history of the 1950 amendments to Section 7, in which Congress frequently indicated its concern over the increase of concentration in American industry. The difficulty is that the method Congress chose to deal with the problem was to strengthen the prohibitions of Section 7, but not to change its basic focus. Congress apparently did not abandon the traditional approach to mergers which emphasized the impact of the acquisition upon competition in the particular geographic and product markets involved; it merely provided a more flexible definition of those markets, in order to strike at the general trend toward

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concentration by prohibiting all mergers that have the proscribed anti-competitive effect "in any line of commerce in any section of the country."

Antitrust suggests (Memo. p. 10) that since in United States v. Pabst Brewing Co., 384 U.S. 546, the Court held that the government may establish a violation of Section 7 by "introduc[ing] evidence which shows that as a result of a merger competition may be substantially lessened throughout the country" (p. 549), it can similarly establish a violation by showing a generalized lessening of competition in the economy as a whole without focusing on any particular product. In Pabst, however, the district court had recognized that the continental United States was a relevant market; and we introduced evidence showing a significant trend toward increases in the level of concentration in the beer business on a national basis, which the Pabst-Blatz merger significantly furthered. It is quite another matter, however, to conclude that because there has been a general increase in concentration in the economy as a whole, a merger of two large firms which increases that concentration--although necessarily only slightly--produces the anticompetitive effects that Section 7 condemns. This theory leads to the conclusion that any merger--whether conglomerate or not--violates Section 7 if the companies are large enough that their combination fairly can be said to be a significant step toward furthering concentration in the whole economy. Perhaps Congress may enact legislation taking that approach to mergers, but it is difficult to conclude that it did so in Section 7 of the Clayton Act. This theory also would require the Court to ignore its frequent statements that, in order to determine the anticompetitive effect of a merger, the relevant geographic and product markets must first be ascertained.

(b). A second aspect of the aggregate concentration theory is the one Antitrust seemingly now urges: that because there has been an increase in concentration which in recent years has been mainly the result of conglomerate mergers, a lesser degree of proof of traditional antitrust criteria should suffice to establish illegality in conglomerate merger cases. Under this analysis, Antitrust argues that the evidence it cites to show the entrenchment of Grinnell, although perhaps not sufficient to establish illegality if a nonconglomerate had been the acquirer, is enough where the acquirer is a large conglomerate. I do not understand the basis of this analysis. The anticompetitive consequences that stem from IT&T's status as a conglomerate exist because of the widespread nature of IT&T's operations and the relationship between those operations and Grinnell's business. This relationship would be the same if IT&T were the only conglomerate. The fact that there are many other conglomerates that also have made acquisitions that allegedly have weakened the play of free competition in many industries is not relevant to determining what the competitive effect of this merger is likely to be. It is difficult to understand why lesser proof should suffice in a particular case merely because elsewhere in the economy similar mergers have taken place.

To recapitulate: This is an extremely difficult case, and our chances of winning in the Supreme Court seem minimal. Nevertheless, I think we have

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no practical choice but to appeal. Our best approach is the reciprocity theory, and even that may founder on the particular facts. It holds the best promise, however, and if accepted would provide a powerful tool for dealing with other conglomerate acquisitions. It is impossible to evaluate the strength of our various theories without a detailed study of the lengthy record; perhaps when we write the brief on the merits, some of our other approaches may turn out to be stronger than they seem at present. At this stage, however, all we can really do is outline our theories, and avoid arguments that will not withstand probing analysis. We should take a bold and broad approach that minimizes challenges to the findings of and disagreements with the district court on minor aspects of its decision, and moulds the issues in terms that will avoid the appearance of seeking a trial de novo.

df

Daniel M. Friedman

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : DMF

DATE: 3/25/71

FROM : ARR

SUBJECT: SUPPLEMENTAL MEMORANDUM FROM ANTITRUST

Now that Antitrust has reiterated its strong recommendation that we appeal, we doubtless have to appeal. On that much everyone agrees. Everyone also agrees that on appeal we should attack the court's holdings with respect to dominance and reciprocity, although I do not think that either one of us shares Antitrust's confidence that the court's findings of fact will not be a substantial problem because we need only challenge the inferences drawn from those findings. And finally everyone agrees that our chances of prevailing on these arguments is mighty slim.

But unanimity ends when we get to the business about the trend toward concentration, which is discussed on page 3. Antitrust answers none of our questions and meets none of our criticism about the relevance of that trend. We are first told that the ITT-Grinnell merger will scare smaller springler firms into merging with other large companies. But even assuming this shows that an anticompetitive effect will result (whatever happened to the desire to encourage foothold acquisitions?), (a) if the district court was right that the ITT-Grinnell merger will not have any significant anti-competitive effects it is hard to see how we can show that the other firms will be scared into merging, and (b) what has this got to do with the trend toward concentration in the economy as a whole?

The rest of the second paragraph of page 3 is, to put it bluntly, mumbo-jumbo. Now it seems the idea is that the trend is relevant only to acquisitions by large conglomerates of leading firms. Ergo, there should be no concern that foothold mergers will be prevented. I am at a complete loss to understand why, if the trend is relevant at all, it is relevant only to the former situation. In any event, the whole point of my memorandum and yours was that Anti-trust had failed to show how the trend toward concentration is relevant at all. We still do not know.

Where do we go from here? I would strongly urge that the Dean, when he authorizes appeal, limit this to the dominance and reciprocity holdings of the district court. If our case is weak on those issues, we will not even be able to put up a respectable front before the Court if we taint and obfuscate the rest of the case by attempting to work in some full-blown "theory" about the trend toward concentration.

Incidentally it seems quite strange for Antitrust to suggest (on page 4) that the ITT-~~EXXON~~ Canteen case could be considered by the Court with this one. It is my understanding that Dr. Mueller's testimony was excluded in that case on the ground of incompetence because of the FTC's refusal to release underlying data. The instant case has enough problems of its own without introducing that can of worms into it.

A. R. RANDOLPH Jr.

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OFFICE OF
THE SOLICITOR GENERAL



5/26/71

SG:

Like Pay Randolph, I don't find Antitrust's memo particularly illuminating. I agree that you should authorize appeal. But the precise scope and form of our arguments must await the jurisdictional statement; we should not attempt to foreclose making any arguments that either hold out some prospect of success or, even if they really do not, present a theory upon which the Supreme Court should rule--if only to open the way for legislation.]

DMF

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File HES
60-149-037-1

Office of
The Solicitor General

March 26, 1971

Re: United States v. International
Telephone and Telegraph Corporation

filing date: April 20, 1971 (3/20/71 order
Justice Harlan)

DIRECT APPEAL AUTHORIZED.

ERWIN N. GRISWOLD
Solicitor General

I think this is a very hard case, but it is an
important one and Antitrust wants to go ahead,
and it is in the public interest, I think, that we
should learn more about what the law is in this
area. ENG.

]

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OFFICE OF
THE SOLICITOR GENERAL



March 19, 1971

Re: United States v. International
Telephone and Telegraph Corporation

Index Date: April 20, 1971 (3/20/71 Arde
Quatern/Holocen)

DIRECT APPEAL AUTHORIZED.

John W. Smith

ERWIN N. GRISWOLD
Solicitor General

I think this is a very hard case, but it is an important one, and Aristotle wants to go ahead and discuss the public interest. I think that we should be very careful about what the law is in this area. Good.

5. After the President's telephone call of April 19, 1971, to Kleindienst ordering him to drop the Grinnell appeal, Kleindienst met, in his office, with McLaren and the Solicitor General and requested the Solicitor General to apply for an extension. McLaren had no objection to the application for an additional extension of time.

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Senator KENNEDY. Now, at some time you had a call from either Mr. McLaren or Mr. Walsh about the 18th, that is right, April 18?

Mr. GRISWOLD. No, I never had a call from either. I understand now that the 18th was a Sunday, so this must have been on the 19th.

Senator KENNEDY. And your secretary told you that the Deputy Attorney General wanted you down in his office?

Mr. GRISWOLD. That is right.

Senator KENNEDY. Could you tell us about that meeting?

Mr. GRISWOLD. I think I have summarized it quite completely in the statement I have already filed.

Senator KENNEDY. There was no one else there?

Mr. GRISWOLD. No one else was there. It didn't last more than 5 minutes, perhaps less.

Senator KENNEDY. And as I understand from your memorandum—could you repeat for us what you believe to be the reasons for seeking the delay in the filing of the jurisdictional statement?

Mr. GRISWOLD. The basic reason was that the Deputy Attorney General wanted it. And I understood the underlying reason was, the letter which he had received from Mr. Walsh which requested it, which was summarized, but which letter I didn't see—I didn't ask to see, it wasn't withheld from me—it was simply, as I recall it, it was on the desk or the side, in front or beside the Deputy Attorney General as he was talking to me, and he pointed to it—but the substance was that there were some matters here which ought to receive further consideration.

Senator KENNEDY. There is nothing further that you can add about that conversation?

Mr. GRISWOLD. No.

Senator KENNEDY. He just said that there are other matters that have been included in this letter that deserve further consideration?

Mr. GRISWOLD. No; as I understand it, it was matters relating to whether we should proceed by litigation on conglomerate mergers.

Senator KENNEDY. The materials we received from the Department show the Solicitor General's memorandum up to March 26, 1971. Can you give us any idea what, if anything, happened between March 26 and April 19?

Mr. GRISWOLD. The jurisdictional—let me start over again, Senator. We had probably 30 or 40 other cases in my office moving through during that time. Once the appeal was authorized, word would be sent to the Antitrust Division, and they would be requested to make a draft of the jurisdictional statement. The jurisdictional statement would be prepared, it would come to my office, and it would be worked over in detail by one of my younger staff members, and then reviewed thoroughly and carefully by my senior staff member, and then would come to me, and then would go to the printer.

And as I recall it, it went to the printer on Thursday or Friday before April 19, and was due back on the afternoon of April 19 in printed form.

Senator KENNEDY. You have supplied materials, or the Department has, a series of memoranda, the following documents—you are familiar with those items here? Are you familiar with the letter from Mr. Wilson that was sent to the committee?

Mr. GRISWOLD. I don't know what you are referring to, Senator.

Senator KENNEDY. Mr. Solicitor, has there been any other occasion in the times that you have served under this or previous administrations when you have been directed by the Deputy Attorney General to seek a delay 9 days after the time expired?

Mr. GRISWOLD. No—if you say 9 days, the time hadn't expired, Senator, and the rule says that you are supposed to apply not less than 10 days before the time expires, but makes it perfectly plain that you can apply within that period, but you have got to show some reason. And I don't recall any case where we did it on the next to the last day.

On the other hand, it is not at all unprecedented that we do make applications within the 10-day period for one reason or another.

Senator KENNEDY. But have you made them at the direction of the Deputy Attorney General any time?

Mr. GRISWOLD. I don't like to accept your word "direction." This was at the request of the Deputy Attorney General. I cannot now name you some. I have had many conversations with the Deputy Attorney General about cases and have frequently heard people, usually other agencies of the Government, who have expressed an interest or concern, and I have delayed my action until I heard them. Ordinarily, however, that would not require any application for an extension of time, because we had enough time. I think this one is the only one that I know of within 1 day, and as far as I can recall, within a 10-day period.

Senator KENNEDY. Do you know Mr. Walsh at all, Dean?

Mr. GRISWOLD. Yes, I have know Judge Walsh at least since the time he was a judge, and then as Deputy Attorney General, and since.

Senator KENNEDY. But you never had occasion to talk with him about this case?

Mr. GRISWOLD. Never whatever about this case, except on Monday afternoon of this week he called me on the telephone and asked me what I said in that statement. But he didn't in any sense complain about it, he simply wanted to know what it was so that he could respond to questions that were coming to him.

I read him, over the telephone, the paragraph relating to him. And he thanked me. And I did talk with him to that extent on Monday of this week. Otherwise I have never talked with him about this case.

Senator KENNEDY. I want to thank you for coming up here this afternoon and being so helpful.

Mr. GRISWOLD. Thank you, Senator.

Senator KENNEDY. You have certainly been very forthright and candid with us, and I want to express my own personal appreciation to you. It is nice to see you again.

Mr. GRISWOLD. Thank you, Senator.

Senator HRUSKA. Dean Griswold, the 10-day rule has been mentioned often. That rule is simply this, is it not, that if there is any request for a postponement of a filing or to meet a deadline, the request for such postponement should be made at least 10 days prior to the date that is sought for extension?

Mr. GRISWOLD. That is right, Senator.

Senator HRUSKA. So that is the general rule. However, the Supreme Court does say, if it is within those 10 days, for good reason, we will still allow the postponement.

Solicitor General and his staff had some reluctance about the appeal, anyway.

This was a request merely for an extension of time. That did not affect the ultimate disposition of the case because it would not have been argued before that term, and as I think you know, the appeal was perfected subsequently, and McLaren said I see no harm in it, and I then called the Solicitor and he came in.

Senator KENNEDY. Now, can you tell us when you read the letter? Did you read Mr. Walsh's letter?

Mr. KLEINDIENST. Well, I think I read the letter comprehensively and thoroughly for the first time during these hearings.

Senator KENNEDY. So, at the time that you made your decision, it was really based on the representations that were made by Mr. McLaren as to what the substance of the letter was?

Mr. KLEINDIENST. Right, and also his characterization and representation as with respect to what the issue was in the memorandum of law, and the letter.

Senator KENNEDY. Well, now, having read the letter in connection with these hearings here, what do you think was meant by Mr. Walsh when he said, "It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration."?

Mr. KLEINDIENST. Well, I do not like to speculate as to what Judge Walsh thought.

Senator KENNEDY. Well, you do not—did you have any reason to believe that they had views?

Mr. KLEINDIENST. No. I did not know.

Senator KENNEDY. Were you at any time in contact with the Secretary of the Treasury, or the Secretary of Commerce, or the Chairman of the President's Council of Economic Advisers about this case?

Mr. KLEINDIENST. No. No.

Senator KENNEDY. About antitrust policy generally?

Mr. KLEINDIENST. No. Well, other than—I never had a conference with Secretary Stans, or the Secretary of the Treasury, about the antitrust policy. I know that just based upon the general statements, public and otherwise, that Secretary Stans had some very sharp differences with the antitrust policy of the Department of Justice, as enunciated by the Attorney General, and effectuated by the Assistant Attorney General McLaren, and there were a lot of other people who sharply disagreed with Judge McLaren's policy, as enunciated by the Attorney General, and supported by the Attorney General, myself, and the President of the United States.

I might have the order wrong.

Mr. McLAREN. May I add a word, Senator Kennedy?

Senator KENNEDY. Yes.

Mr. McLAREN. I think it is fair to say that at the time we did have underway an overall antitrust kind of review going on; and I know that there were meetings going on at that time.

There was an interagency thing. I was one of the principals on it. I do not know whether or not there was any connection between this letter of Walsh's, as to which Mr. Kleindienst is perfectly right, I did disagree.

For example, he said in there, as I recall, that our policy was stopping perfectly normal, legitimate mergers that had nothing to do with effects on competition, and I strenuously argue with that.

Other parts of his legal pitch I very much disagree with. But, I—it subsequently developed that there was no connection between what he was saying and the—and no connection ever developed between what he was saying and the antitrust review we then had underway.

Senator KENNEDY. Well, Mr. McLaren, after reading the letter, particularly the part which reads—

It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration.

—do you remember mentioning that to Mr. Kleindienst when you gave him your summation of the letter?

Mr. McLAREN. I do not specifically remember it, Senator, but those agencies all had representatives on this group that was reviewing antitrust policy overall.

Senator KENNEDY. And actually, some of those—wasn't that primarily the reason for the extension, as stated in the Solicitor General's presentation?

Mr. McLAREN. That is the reason I did not oppose it. If we were talking about a straight legal proposition, as to whether or not they should have an extension, I would—I would not have agreed with that. But, for a kind of a policy review thing, I was interested to hear what developed. My information at that time was that he was—or my feeling at that time was that he was wrong.

I thought that Dr. McCracken, for example, was very much in favor of our antitrust policy, and I have never heard, although we had differences on the specifics, I never heard that Secretary Stans or the Treasury people were against it, and I subsequently turned out to be right. We had the extension, but we went ahead and filed the brief.

Senator KENNEDY. Was this the first time that you thought that the Secretary of Treasury, and of Commerce, and the Council of Economic Advisers, would have views on this particular case?

Mr. McLAREN. Well, we had been working on this project for some length of time.

Senator KENNEDY. Well, so that did not come as anything very new to you, did it?

Mr. McLAREN. The new thing was simply, Senator, Mr. Walsh's suggestion in the thing, and we were up against a filing date, and we simply allowed time to explore that. As it turned out, there was nothing to it.

Senator KENNEDY. Can you tell us what you found particularly persuasive about the Walsh letter that would have been the basis for—

Mr. McLAREN. I say again, I strongly objected and was not persuaded as to the legal aspects of it.

However, as to the, particularly finding out that Mr. Kleindienst was not particularly persuaded or had no views on the thing, I had no particular objection to an additional extension of time. As I said before, extensions of time in cases like this are not novel or unusual.

Senator KENNEDY. So, we have a situation here where Mr. McLaren disagreed with the letter, and Mr. Kleindienst, you had not read it,

Senator KENNEDY. Could you tell us the conversation on the 19th? What did that involve?

Mr. KLEINDIENST. Well, it took about, I would imagine it would have taken a few seconds unless I would have talked to him about some judicial candidate. Let's assume I did not talk to him about a judicial candidate. It would have just been a matter of a few seconds Senator Kennedy.

Senator KENNEDY. And this conversation with Mr. Walsh was about the—why did you feel you had to call him back?

Mr. KLEINDIENST. I think as a courtesy. I didn't have to.

Senator KENNEDY. He had telephoned you about this case and—

Mr. KLEINDIENST. Mr. Walsh and I are very close friends and have developed a very close friendship over the 3 years as a result of our work together in the judicial program. We had the conference with Mr. McLaren and the Solicitor. The Solicitor was asked to file an extension. He said that he would and I merely called him to tell him what the decision was. I guess it was a courtesy more than anything else. I didn't have to.

Senator KENNEDY. At any time did you talk to Mr. Rohatyn about this?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. You didn't mention his name during the course—

Mr. KLEINDIENST. No, sir. I hadn't met personally Mr. Rohatyn at that time. At about that time, I would have probably—at or about that time, Mr. Rohatyn would have called me to come in and see me on the 20th, the next day.

Senator KENNEDY. Could you tell us, when Mr. Walsh called, did you tell Mr. McLaren about that telephone call?

Mr. KLEINDIENST. Did I?

Senator KENNEDY. Yes, or did you—

Mr. KLEINDIENST. I don't know if I did or not, Senator Kennedy; because the call would have indicated that he was going to deliver the letter and the memorandum of law to me by a young man in his office. The time was rather short, as I think you can tell. The 16th—the 20th was the last day. I don't know if I did or not. I know when the young man came to my office and handed me the materials, I didn't even read them. I called Mr. Comegys or I called for Mr. McLaren and he wasn't there and Mr. Comegys came up and I handed the materials to the young man in his presence.

Senator KENNEDY. When was the final time for the—

Mr. KLEINDIENST. I believe the 20th was the last day.

Senator KENNEDY. So this was on the 16th and—

Mr. KLEINDIENST. A Friday.

Senator KENNEDY. You have no recollection of talking to Mr. McLaren about either the telephone conversation or about the letter?

Mr. KLEINDIENST. No, I don't, Senator. But I could have.

Senator, I would like to say something here, if I may. These events occurred a year ago. This wasn't the only matter that I had. It didn't seem to me to be of any particular consequence.

Senator KENNEDY. Which didn't?

Mr. KLEINDIENST. Well, these; I mean that there wasn't any particular significance to these matters other than just routine

Mr. KLEINDIENST. Gee, I think you just have to draw your own conclusions, Senator.

Senator KENNEDY. What conclusions do you draw from them, just from that language?

Mr. KLEINDIENST. You mean if I accept this language for what apparently it says?

Senator KENNEDY. You were accepting language in the letter.

Mr. KLEINDIENST. I didn't read it when I got it.

Senator KENNEDY. Oh, you didn't read this letter, either?

Mr. KLEINDIENST. No, sir, when it was delivered to me. I asked Mr. Comegys to come up and I handed the letter and the memorandum of law to him and told him that this came from Judge Walsh.

Senator KENNEDY. Well, now, let me get it straight. With Mr. Griswold and your meeting with Mr. Griswold, what did you—the action that Mr. Griswold took in behalf of the Government, was that on his initiative?

Mr. KLEINDIENST. No, as I have testified, Senator Kennedy, Friday the 16th, I delivered the letter, I handed him the letter and the memorandum of law with the young man who delivered it to me in my office. It was 3 or 4 in the afternoon—I don't know. 2, 3, 4, 5.

Then on Monday afternoon, Mr. McLaren contacted me and said. I have gone over this request of Judge Walsh and I would like to talk to you about it. He came up. We discussed it.

Senator KENNEDY. You discussed the letter?

Mr. KLEINDIENST. Well, we discussed—I don't even think I read the letter there. We discussed the request contained in the letter, Senator. We didn't pick it apart like we are doing now, analyze what Judge Walsh thought or what we thought we meant. What we were dealing with was the request contained in the letter and that is to say an extension of time in the *Grinnell* case. Mr. McLaren said, I don't agree with the contention made here.

Senator KENNEDY. I am sorry, he said what?

Mr. KLEINDIENST. He said, I don't agree with the position taken in Judge Walsh's letter.

But it seems to me inasmuch as no harm can be done by giving the extension, since the case could not be heard in that term of the court, he had no objection if we requested the extension.

At that point, I called the Solicitor General and he came down to my office while Judge McLaren was there and we asked him if he would would ask for the extension. And he said that he would, and he did.

Senator KENNEDY. You called him, as I understand it?

Mr. KLEINDIENST. Yes, I did. While the Judge was in my office.

Senator KENNEDY. Did you ask him for the extension, or did Mr. McLaren?

Mr. KLEINDIENST. I think it was a joint request.

Senator KENNEDY. Well, someone has to make the request.

Mr. KLEINDIENST. Well, let's say I did.

Senator KENNEDY. Well, did you? That is what I want to find out.

Mr. KLEINDIENST. Well, I don't recall, Senator. The Dean recollects that I did and it is so said in his statement. I don't think it makes any difference. The request came jointly from me and Judge McLaren—we weren't both talking at the same time—to have him do this, and he did.

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Senator KENNEDY. Why? Can you help me—

The CHAIRMAN. Your time is up.

Senator KENNEDY. Just on this final point, just a continuation, can you help us on why, or whom you talked to in the morning, that you believed it was going to be negative and what transpired during that period of time that turned it around to be positive as Judge Walsh said?

Mr. KLEINDIENST. I think I would have talked to Judge McLaren.

Senator KENNEDY. He would have been negative or positive?

Mr. KLEINDIENST. Yes; he would have gone negative.

Senator KENNEDY. He would have been negative?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. Whom did you talk to that made it positive?

Mr. KLEINDIENST. Later on I believe my testimony is—my recollection is I had a meeting with the Solicitor General and Judge McLaren. I know I at least had a meeting with the Solicitor General in my office about it because without such a meeting and without his assent the extension of time would not have been filed.

Senator KENNEDY. Well, if McLaren was negative and the Solicitor was neutral on it, how did the decision come out for the 30-day extension?

Mr. KLEINDIENST. How did it come out positive?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. Well, McLaren had a pretty rigid attitude about all the ITT cases and all of the attempts one way or another to, let's say, interfere with his prosecution of these cases. I believe that the reason why the extension was granted, number one, we all three knew, Judge Walsh very well, that the case was not going to be argued that term in the Supreme Court, that all they were asking for was a 30-day delay in the filing of our jurisdictional statement and that could have no prejudice one way or another upon the prosecution of the case. So it wouldn't have been a difficult or an unreasonable or an illogical thing to say. All right, let's give them the extension of time."

Senator KENNEDY. Of course, those facts were in Judge Walsh's letter in the morning; were they not?

Mr. KLEINDIENST. Those facts about what?

Senator KENNEDY. The fact that the 30-day extension was going on—

Mr. KLEINDIENST. But I can assure you, Senator Kennedy, I had not talked to Dean Griswold when I had my telephone conversation with Judge Walsh that morning.

Senator KENNEDY. And he was negative?

Mr. KLEINDIENST. Who?

Senator KENNEDY. Judge Walsh—I mean, McLaren was negative?

Mr. KLEINDIENST. I think, yes; I think he was. You know, if it was a substantive device with respect to these cases, he was absolutely negative. When it got down to be a procedural 30-day extension of time that could not have any substantive effect on the issues in the case, then I guess he is neutral.

Senator KENNEDY. I was just trying to figure out who was positive.

Mr. KLEINDIENST. Well, I was positive about giving them the procedural 30-day period of time inasmuch as it could not affect the outcome of the cases and I think that was the attitude taken by Dean Griswold.

6. On June 17, 1971, McLaren recommended to Kleindienst that the ITT suits be settled. Kleindienst approved the proposed settlement by writing: "Approved, 6/17/71. RGK." In affixing his approval, Kleindienst relied on the expertise of McLaren.

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to the extent that ITT and its subsidiaries are able to finance foreign operations through foreign borrowings in lieu of expatriating funds or reducing the flow of funds from foreign subsidiaries to the United States.

Hartford is obviously not a major direct factor in ITT's overall favorable balance of payments posture. Hartford's impact is indirect in terms of the balance sheet strength it adds to ITT. To the extent that the divestiture of Hartford affects ITT and its subsidiaries' ability to get credit on favorable terms there would be a longer-term impact upon ITT as an earner of foreign exchange.

A final factor should be mentioned. Several hundred million dollars of ITT stock is held by foreigners. The increase or decrease in such holdings, while representing short-term investment swings, nevertheless affects the balance of payments. If ITT is a less attractive investment, without Hartford, there could be some balance of payments impact from liquidation of foreign holdings.

In addition to Hartford, the Justice Department is also seeking, through court action, the divestiture by ITT of Canteen Corporation and Grinnell Corporation, both acquired in 1969. On December 31, 1970, the U.S. District Court rendered a decision in favor of ITT in the Grinnell litigation; this decision is being appealed by the Justice Department. The Canteen litigation has not yet come to trial.

In 1970 Grinnell earned \$18 million after taxes and Canteen earned \$10 million after taxes. With Hartford, the three companies accounted for 12% of consolidated revenues of ITT and 33% of consolidated net income. While it is not possible here to comment with definition as to the effect on ITT of divestiture of these two companies, including their value as separate companies, the effect on ITT's capitalization, etc., it is reasonable to assume that divestiture would have some impact upon the investment community's view of ITT and the predictability of its earnings. Most likely it would result in further concern as to ITT's ability to manage consistent earnings increases and such concern would probably be reflected in a diminished multiple on the common stock.

CONCLUSION

In conclusion, I think the following statements can be made:

1. Hartford and ITT as separate companies would be valued in the market place at approximately \$54 per present ITT share versus \$64 $\frac{1}{2}$ for the combined company on 5/14/71. This represents a 16% diminution in market value, or almost \$1.2 billion.

2. A spinoff to ITT stockholders would appear to be the only feasible way of divesting Hartford. However, because of the dividend requirements of the Series N Preferred, the elimination of the dividend from Hartford to ITT would probably have a meaningful impact upon the ITT parent company and its liquidity. A logical result would be a cut in the dividend on the ITT common stock.

3. The divestiture of Hartford would have a negative impact upon the ITT parent company and consolidated balance sheets. The result would be a reduction in ITT's incremental parent company debt capacity and possibly credit rating.

4. Finally, to the extent that the changes in (2) and (3) affected ITT's consolidated credit picture, there could be some indirect negative effect upon ITT's balance of payments contributions.

RICHARD J. RAMSDEN,
May 17, 1971.

Mr. McLAREN. I might say that the man that made that report is the same man I used in analyzing the Ling-Temco-Vought situation when we began to be concerned that that company might go down too during the course of our proceedings.

After receiving this report—the report from the Treasury, as I recall, was an oral report—we in the Antitrust Division gave very careful consideration to possible alternative means of settling the three cases, consistent with antitrust objectives, but without the massive adverse impact upon ITT and its shareholders that would attend a divestiture of Hartford.

Ultimately Mr. Hummel—who as I mentioned was the deputy director of operations—and I, with some participation by Messrs. Comegys, Carlson, and Mr. Joseph Widmar, the principal trial attorney on the *Grinnell* case, developed a proposal which was reduced

to writing in the form of a memorandum to Deputy Attorney General Kleindienst dated June 17, 1971.

I presented this memorandum to the Deputy Attorney at a regularly scheduled briefing on June 17, 1971, and he approved. I have a copy of this memorandum with me and it is attached to my prepared statement, which has been furnished to the members of the committee.

(The memorandum referred to follows:)

DEPARTMENT OF JUSTICE,
Washington, D.C., June 17, 1971.

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re Proposed Procedure in ITT Merger Cases

Background.—We have three anti-merger cases pending, against ITT: the *Grinnell* case (sprinkler systems), which was tried and lost in the District Court and is now on appeal to the Supreme Court; the *Canteen* case (vending and food service), which was tried and is now *sub judice*; and the *Hartford Fire Insurance Co.* case, which is set for trial in September.

About six weeks ago, representatives of ITT made a confidential presentation to the Department, the gist of which was that if we are successful in obtaining a divestiture order in the ITT-Hartford Fire Insurance Company case, this will cripple ITT financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a \$500 million premium for the Hartford stock but took its assets in at book value in a so-called pooling of interests transaction. It cannot now sell its Hartford stock without (a) suffering a serious loss as opposed to what it paid but, at the same time (b) incurring a large capital gain tax. A "spin-off" to its own shareholders would be a—and probably the only—feasible alternative; however, a spin-off would leave ITT with the large preferred dividend commitment it made in acquiring Hartford (\$50 million a year), but without the earning power which was counted on to cover that commitment. The result, we are told, would be a loss of well over \$1 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity.

We have had a study made by financial experts and they substantially confirm ITT's claims as to the effects of a divestiture order. Such being the case, I gather that we must also anticipate that the impact upon ITT would have a ripple effect—in the stock market and in the economy.

Under the circumstances, I think we are compelled to weigh the need for divestiture in this case—including its deterrent effect as well as the elimination of anti-competitive effects to be expected from divestiture—against the damage which divestiture would occasion. Or, to refine the issue a little more: Is a decree against ITT containing injunctive relief and a divestiture order worth enough more than a decree containing only injunctive relief to justify the projected adverse effects on ITT and its stockholders, and the risk of adverse effects on the stock market and the economy?

I come to the reluctant conclusion that the answer is "no." I say reluctant because ITT's management consummated the Hartford acquisition knowing it violated our antitrust policy; knowing we intended to sue; and in effect representing to the court that he need not issue a preliminary injunction because ITT would hold Hartford separate and thus minimize any divestiture problem if violation were found.

Perhaps equally guilty is the trial judge, who listened sympathetically to defendants' plea that granting our motion for preliminary injunction would cost Hartford stockholders the \$500 million premium ITT was paying for their stock. Obviously, if such a premium is being paid on an unlawful acquisition, the acquiring company may lose that and more if forced to divest, and will so plead if found guilty. This highlights our continuing need for amendment of the Expediting Act to permit us to appeal from District Court orders denying our motions for preliminary injunctions in such cases.

Proposed Procedure.—In order that we do not lose the deterrent we have developed in this field, I propose the following terms of settlement of the ITT cases:

1. *Grinnell*—divestiture. This would require a joint motion in the Supreme Court to refer the case back to the District Court for entry of consent order—which was the procedure the Department followed in *National Steel Corporation* (No. 31, Oct. Term, 1966).

2. *Canteen*—divestiture by consent order.

3. *Hartford*—injunction along lines of LTV, including particularly

(a) Prohibition for 10 years of (i) acquisition of any corporation with assets of \$100 million or more; (ii) acquisition of any corporation with assets of \$10 million–100 million without approval of the Department, or permission of the court; and (iii) for a period of an additional five years, prohibition of any acquisition of any corporation with assets over \$10 million except on a showing that it will not tend to lessen competition or create a monopoly.

(b) Prohibition against engaging in systematic reciprocity.

(c) Divestiture of Avis and Levitt.

Finally, in all three cases, I think we should have the right to approve ITT's press releases. We want no great protestations of innocence, government abuse, etc., etc.

I recommend that you approve a program along the lines of the foregoing—allowing, of course, for some leeway in negotiating.

RICHARD W. McLAREN,
Assistant Attorney General,
Antitrust Division.

Approved, 6/17/71.

R. G. K.

Mr. McLAREN. This plan contemplated divestiture of Grinnell and Canteen; divestiture of Avis and Levitt; prohibition for 10 years of acquisitions of any corporation with assets of \$100 million or more, or acquisitions of any corporation with assets of more than \$10 million except on a showing that it would not tend to lessen competition, and so forth—that would be a showing by ITT and it would be their burden of proof; prohibition against engaging in systematic reciprocity; and certain other provisions along the lines of our LTV decree.

At the conclusion of my meeting with Mr. Kleindienst, I telephoned Mr. Felix Rohatyn from Mr. Kleindienst's office—while he was present—and outlined my proposal to him. This was at approximately 10 o'clock in the morning on June 17. Mr. Rohatyn asked certain questions about points in the proposal and repeated his understanding of the proposal as—it appeared to me—he took notes on it. I told Mr. Rohatyn that if the proposal was acceptable to ITT as a basis for a settlement, he should have ITT's trial counsel get in touch with me. I made clear that if ITT was unwilling to accept the basic outline of the proposal, with negotiation only as to details, I did not care to discuss the matter further.

On the evening of June 17, I informed Messrs. Hummel, Mahaffie and Carlson of the Antitrust Division that our proposal had been communicated to ITT's representative. I did this because Mr. Carlson and Mr. Widmar were going to take the depositions of some of ITT's top executives in New York on June 18, and I felt that they should be fully informed as to the status of the case.

Thereafter Mr. Henry Sailer, of the Covington & Burling law firm, who was trial counsel for ITT in the *Grinnell* and *Hartford* cases, as I said before, telephoned me for an appointment. Judging from the telephone record maintained by my secretary, this apparently was on June 18; we made an appointment for a preliminary discussion on June 24. At the meeting on June 24, Mr. Sailer showed by his comments that he had received a rather full and accurate account of the proposal which we had made to Mr. Rohatyn, and he inquired as to various specifics of our proposal. For example, he suggested it would be appropriate to advise Judge Austin, who then had the *Canteen* case under consideration, that we were entering into serious settlement

negotiations. Also, with respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties, that is, those bought or constructed after the main acquisition. With respect to Grinnell, he argued that ITT should be permitted to divest only part of Grinnell, that is, the fire protection business, which had been discussed during the trial of the case. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked about the negotiability of our provision on no acquisitions over \$10 million, and so forth. I told him we would negotiate on details, but that the basic provisions of the proposal were firm.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer, and had had a discussion with him concerning procedure.

On July 1, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

Negotiations between Carlson and Widmar on the one hand and Sailer on the other hand continued through the month of July—a part of which time I think from about July 10 to July 20, I was in London at the ABA meeting—and in the last few days of the month, Carlson and Widmar advised me that the matter was about wound up and that it would be helpful if I would sit in on one or two sessions to cover some final points. On July 30, I agreed that we would accept divestiture of the Fire Protection Division of Grinnell, rather than insisting on full divestiture. I did so because Messrs. Carlson and Widmar, with Mr. Hummel concurring, felt that separating the Fire Protection Division from the rest of Grinnell would be a procompetitive step, putting the rest of the industry on a more even competitive basis with Grinnell, which incidentally was the leader in that particular industry, which had had a competitive advantage by reason of its vertical integration and its broad contacts in the construction business.

There were certain other minor points still in dispute, and our meeting adjourned on the evening of July 30, which was a Friday, for Mr. Sailer to consult with his client. We reconvened our meeting on Saturday morning, July 31, and ironed out the final points. Mr. Sailer then contacted ITT—and I believe they polled the directors for final approval of the proposed settlement by telephone during the day. I then prepared a press release, for immediate distribution, announcing that we had reached an agreement in principle on the terms of consent decrees which, if approved by the courts, would terminate the three cases. This was done in order to head off any further newspaper speculation, and any possible insider trading when the markets reopened on the following Monday.

In conclusion, I want to emphasize that the decision to enter into settlement negotiations with ITT was my own personal decision; I was not pressured to reach this decision. Furthermore, the plan of settlement was devised, and the final terms were negotiated, by me with the advice of other members of the Antitrust Division, and by no one else.

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Mr. KLEINDIENST. No; I might have talked to Governor Nunn two or three times since I have been in the Government. I know I had one conversation in which he was interested in being a judge. And I think that is the most lengthy conversation I even had with him.

The CHAIRMAN. Your time is up.

Senator COOK. Mr. Kleindienst, just a couple of very short questions. There was, as a matter of fact, a great divergence of opinion within the administration relative to, not yourself but Mr. McLaren's policy in the Antitrust Division; was there not?

Mr. KLEINDIENST. Not only in the administration but in the country, in the legal profession.

Senator COOK. As a matter of fact, the Stigler report, that had been filed, stated that, and I quote: "vigorous action on the basis of our present knowledge of conglomerates is indefensible." And the report went on to say, and I quote again from the report which was made to the President of the United States:

We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon.

So there was a divergence of opinion, was there not, and, as a matter of fact, as the result of Mr. McLaren's position as head of the Antitrust Division, the largest corporate divestiture that ever took place in the history of the United States occurred as a result of his actions; did it not?

Mr. KLEINDIENST. Yes; not only that, but an agreement against further acquisitions.

Senator COOK. For a period of 10 years.

Mr. KLEINDIENST. Right.

Senator COOK. And as a matter of fact, at the time that this debate was going on and his actions were going on, the former head, under the former President, of the Antitrust Division took the position that the position of this administration in its antitrust policies was wrong?

Mr. KLEINDIENST. That is correct.

Senator COOK. Did he not?

Mr. KLEINDIENST. Dr. Turner.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. Birch.

Senator BAYH. Mr. Kleindienst, the last question I asked before deciding there was nothing to be gained in pursuing other questions was something to the effect that were you aware of the Ramsden report and you—I mean, were you aware of its specifics—and you said, as I recall, you were not aware of any of the specifics at all?

Mr. KLEINDIENST. Never read it.

Senator BAYH. And, as I recall the hearing, at least part of the answer to the last question was that your reliance on Judge McLaren was really the whole reason this case was resolved as it was.

Mr. KLEINDIENST. You mean that Judge McLaren recommended this solution?

Senator BAYH. Yes, sir.

Mr. KLEINDIENST. That is the only reason why I went along with it. He recommended it.

Senator BAYH. Was that recommendation and the reasons for it that compelled you to accept his judgment contained primarily in the

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memorandum that we have all read? It is on page 111 of the record, "Memorandum for the Deputy Attorney General Re Proposed Procedure in ITT Merger Cases." If you are not familiar with the Ramsden memo, are you familiar with that memo?

Mr. KLEINDIENST. I do not have any present recollection of having read it. Mr. McLaren would send me a memorandum and then what we would usually do is discuss it, which would save me a lot of time and it also gave him an opportunity to present it, I think, a little bit more clearly. I might have read it, Senator Bayh. I do not know.

Senator BAYH. This is a memorandum, if I might try to ask you to refresh your memory, which was dated June 17, 1971, and which lists in some detail the reason why you are recommending the settlement, if it is approved, and it is "Approved. June 17, 1971. RGK."

Mr. KLEINDIENST. Right.

Senator BAYH. Then I understand that after this ITT was called.

Mr. KLEINDIENST. Right.

Senator BAYH. Does that refresh your memory?

Mr. KLEINDIENST. Yes, it does. Now I know the memorandum you are talking about. Whether I read it or not in its entirety is doubtful to me. Mr. McLaren would have discussed it with me and I would have approved it in writing just so it would show it was approved in his file. After that we called Mr. Rohatyn and Mr. McLaren outlined the broad outlines of the proposed settlement to him.

Senator BAYH. When a man like Judge McLaren, your assistant, makes recommendations like that, of this consequence, is it your judgment to take the memorandum and its discussion at face value or do you try to substantiate it with, from other sources?

Mr. KLEINDIENST. No, I have never tried to substantiate a recommendation or opinion of Judge McLaren from any other source. I have read complaints or memoranda and have raised questions about it, and then have had a conference, and had it explained to me, and I guess, Senator Bayh, the antitrust law is probably the most specialized form of the art that we have. Consequently, you have to make a judgment whether you have got a competent lawyer in the field, and I do not think anybody challenges McLaren on that; and then, second, whether he is a man of integrity, so that when he tells you something you know what his reason for telling you something is. I think it would have been presumptuous for me to go out and hire a consultant to check on McLaren in a field of law about which I then knew very little and about which I still know very little, although I have learned a little bit more about it.

Senator BAYH. I must say I have the greatest sympathy with you in your description of the antitrust law being complicated. I would find it much more so than you. And I would be inclined, I suppose, to rely on a man with Judge McLaren's expertise. I keep coming back to this inconsistency and perhaps you can help us out on this. If we are to accept your reasoning, rationale, which I am prepared to do, relative to the ITT case, why is it again you did not go along with Mr. McLaren's advice on the *Warner-Lambert* case?

Mr. KLEINDIENST. That is the one exception, and I guess that hopefully proves the rule. When the *Warner-Lambert* situation came up, as I try to recollect it again, I was out of town, I got a call from Mr. Mitchell, wherever I was, on a Friday afternoon or a Saturday morning, indicating that they had come up with a recommendation

7. Settlement initiations had taken place in late 1970. ITT's settlement posture advanced included its keeping the Hartford Fire Insurance Company. McLaren rejected any settlement talk along that line.

In early 1971, ITT began to formulate a plan, based on economic theory, of why it was important for ITT to retain Hartford. Eventually, on April 29, 1971, ITT made an economic presentation to the Department of Justice on national economic consequences if ITT were forced to divest itself of Hartford. As a result of that presentation, in combination with the Ransden Report from his own independent financial expert, McLaren proposed a settlement offer enabling ITT to retain Hartford.

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Form DJ-150
(Ed. 4-7-69)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

JWPoole:dmh

TO : Files

DATE: August 7, 1970

FROM : John W. Poole, Jr., Assistant Chief
General Litigation Section

FILE: 60-270-037-1

SUBJECT: United States v. International Telephone
and Telegraph Corporation (Canteen):
Conference with Defendant's Counsel

On August 6, 1970, Hammond Chaffetz and William Jentes of the Kirkland Ellis firm called on Mr. McLaren in Washington to discuss possible settlement or disposition of the captioned case. Gerald Connell and I were also present.

Mr. Chaffetz contended that the Government's evidence elicited so far is so weak that the case ought to be dropped. He and Mr. Jentes adverted among other things to what they described as the extremely small number of "reciprocity" incidents revealed in the recent depositions of the Government's proposed witnesses Fishman, Walsh and Manthy. They mentioned also that of all the possible incidents which have cropped up in Canteen documents in only 10% of these instances has Canteen gotten business. Overall Mr. Jentes said that the incidents of reciprocity which the Government intends to prove are insignificant given the size of this industry.

Mr. Chaffetz also admitted that at one time Canteen had practiced reciprocity as "everyone" had practiced reciprocity because it was understood that it was legal if coercion was not used. He said that this was no longer the case and particularly in view of ITT's management it was unrealistic to expect Canteen to engage in reciprocity.

Mr. Chaffetz also asserted that ITT would only improve Canteen's operations and this would redound to the benefit of the industry as a whole. (Mr. Jentes hastened to add that the management improvements ITT would make were not of a sort which would be available only to large firms.)

Mr. McLaren stated his intention to pursue the case, pointing out that the reciprocity issue was only half the case; there was also a major issue of the trend toward concentration through mergers, a trend in which ITT has been a leader and a prime contributor and one which runs afoul of the concerns voiced in the legislative history of the Celler-Kefauver Act.

Mr. Chaffetz said that although he had not spoken to Mr. Geneen of ITT on the subject he thought that ITT might be willing to consider an injunction of some years' duration against further acquisitions as a means of settling the pending antitrust cases. He also stated that if the facts warranted it, ITT would be willing to settle the Canteen case on the entry of an order along the lines of that entered against U.S. Steel. Mr. McLaren indicated that he felt that divestiture was the proper remedy here.

Mr. Chaffetz asked whether this was regarded as a "test case" and Mr. McLaren challenged that characterization, pointing out that this was one of a group of cases where the grounds for Government suit had been clearly described to the proposed defense before suit was brought.

August 18, 1971

MEMORANDUM CONCERNING NEGOTIATIONS
FOR SETTLEMENT OF ITT CASES

Three cases were filed with respect to ITT acquisitions: Canteen Corporation, Grinnell Company and Hartford Insurance Company, all in 1969. At various times in 1970, overtures were made by counsel to settle these cases and in every case counsel was advised that the cases could be settled but a sine qua non was divestiture of at least Hartford and Grinnell.

In November of 1970, Ephraim Jacobs of the law firm of Hollabaugh & Jacobs of Washington, representing ITT, visited me and proposed that ITT would be willing to divest Canteen, the principal parts of Grinnell and ITT-Levitt as well as certain other subsidiaries of ITT which might be agreed upon, provided that they could retain Hartford. I said that this was out of the question. Jacobs later wrote me a letter substantially confirming the discussion we had.

At some time in March, we were advised by ITT representatives that ultimate divestiture of Hartford would be almost a fatal blow to ITT and that they would like to make a presentation to establish this fact and to establish a basis for negotiations for settlement without a Hartford divestiture. Arrangements were made and a meeting was held in this office* attended by the following representatives of ITT:

Howard J. Aibel, Senior Vice President
and General Counsel
Felix Rohatyn, director of ITT, member of
Lazard et Freres
Henry P. Sailer, Covington & Burling

and as special consultants:

Dr. Raymond Saulnier, Columbia University
Willis J. Winn, Wharton School, University
of Pennsylvania

* On April 29, 1971

Representing the government were Deputy Attorney General Richard Kleindienst, Messrs. Comegys, Hummel, Mahaffie, Carlson and myself of the Antitrust Division, and Bruce MacLaury and Timothy Green of the Treasury Department.

The substance of the ITT presentation was that a Hartford divestiture would cost the ITT stockholders approximately \$1 billion. The reasons for this are varied but include the fact that ITT paid a \$500 million premium for Hartford; it would have to pay a very large capital gain tax on a sale of its Hartford stock; and if it spun off the Hartford stock to its stockholders, it would be left with an unmanageable issue of preferred stock.

Following the meeting, we requested the Treasury representatives and an outside consultant to evaluate the ITT claims.

Shortly after the middle of May, these experts reported that there was substantial support for the arguments made by ITT and that a Hartford divestiture would indeed be very difficult for ITT and, because of changes in the law and in accounting practice, such a divestiture would probably entail a very large loss to ITT stockholders.

Following this report, there was consideration in this office of alternative means of settling the case consistent with antitrust objectives, and Mr. Hummel and I, with some participation by Messrs. Comegys, Carlson and Widmar, developed a proposal.

This culminated in a memorandum which I prepared for the Deputy Attorney General dated June 17, 1971. I presented this memorandum to the Deputy personally at approximately 8:30 in the morning on June 17, and after considerable discussion, he approved our plan of settlement.

This plan contemplated divestiture of Grinnell and Canteen; divestiture of Avis and Levitt; prohibition for 10 years of acquisitions of any corporation with assets of \$100 million or more, or acquisition of any corporation with assets of more than \$10 million except on a showing that it would not tend to lessen competition, etc.; prohibition against engaging in systematic reciprocity; and other provisions along the lines of our LTV decree.

At the conclusion of our discussion, Mr. Kleindienst and I telephoned Mr. Rohatyn at approximately 10:00 A.M. June 17 and outlined this proposal to him. Mr. Rohatyn apparently took notes on the proposal; he asked certain questions about details of the proposal. We suggested that if this appeared to present a reasonable basis for settlement, with negotiation as to details, to have ITT's counsel get in touch with us.

On the evening of June 17th, I informed Messrs. Hummel, Mahaffie and Carlson that this offer had been communicated to ITT's representatives.

Thereafter, Henry Sailer telephoned for an appointment (apparently on June 18) and came in for a preliminary discussion on June 24. He had received a rather full and accurate account of the proposal I had made to Rohatyn and he inquired as to certain specifics of our proposal. For example, he suggested it would be appropriate to advise Judge Austin, who then had the Canteen case under consideration, that we were entering into serious settlement negotiations. With respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties. With respect to Grinnell, he strongly urged that ITT be forced to divest only part of Grinnell, i.e., the Fire Protection business. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked

about the negotiability of our provision on no acquisitions over \$10 million, etc.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer and had had a discussion with him concerning procedure.

On July 1st, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

The negotiations continued through the month of July and we reached our ultimate agreement on Saturday, July 31. (On July 30, we indicated for the first time we would accept divestiture of the Fire Protection Division of Grinnell rather than insisting on full divestiture.) Carlson and Widmar have notes of their discussions, and their notes and memories would be the best source of information concerning the time when substantial agreement was reached.

* * *

The foregoing was dictated in the presence of Messrs. Comegys and Hummel of the Antitrust Division, and Messrs. Rossen and Borowski of the SEC.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division
Department of Justice

----- X
In the Matter of :
TRANSACTIONS IN THE SECURITIES :
OF INTERNATIONAL TELEPHONE AND :
TELEGRAPH CORPORATION :
File No. HO-536 :
----- X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HAROLD S. GENEEN, being duly sworn, says:

1. I am the President and Chief Executive Officer of International Telephone & Telegraph Corporation ("ITT").

2. I submit this affidavit to provide the Commission with information concerning a rough draft memorandum dated May 5 1971 (Exhibit A hereto) which I prepared for the use of internal counsel at ITT.

3. The background of this May 5 draft memorandum is as follows:

In about January 1971, I was informed that Assistant Attorney General Richard McLaren had rejected a proposal by ITT to settle the three antitrust cases pending against it and had inquired why ITT was so insistent against having a divestiture of Hartford Fire Insurance Company ("Hartford") included in any possible settlement. We understood Mr. McLaren's question to me that it would take a detailed financial and economic presentation on the importance of Hartford to ITT to persuade the Justice

Department that divestiture of Hartford could not realistically be expected to be part of any voluntary settlement of these three antitrust cases.

Accordingly, preparations thereafter began for a presentation to the Department of Justice on the adverse economic and financial impact on ITT and national policy concerns which a divestiture of Hartford would have and it was eventually decided that Mr. Felix Rohatyn, an ITT director and a acknowledged expert in the financial community, should take the lead in making this presentation to the Justice Department. For this purpose, arrangements were made for Mr. Rohatyn to see Deputy Attorney General Richard Kleindienst on April 20, 1971 (Attorney General John Mitchell having previously disqualified himself from acting on these cases).

Mr. Rohatyn met with Mr. Kleindienst on April 20, and made a preliminary economic presentation on the importance of Hartford to ITT and the national economy. I understand that following the meeting arrangements were made for a full-scale presentation by ITT to Mr. McLaren and others on this subject for April 29. It is my recollection that Mr. Rohatyn also reported to me that, during the April 20 meeting, he had suggested to Mr. Kleindienst that the maximum divestiture which he felt he would personally recommend to the ITT Board of Directors in an overall voluntary settlement of the three antitrust suits against Hartford, Canteen and Grinnell would be a divestiture of Canteen and Grinnell. Mr. Rohatyn told me that Mr. Kleindienst did not respond to this statement and there was no further discussion on the subject. While I recognized that as a practical matter the Department of Justice might insist upon

of an overall settlement, I was concerned that Mr. Rohatyn's statement might preclude us in the future from negotiating a lesser divestiture with respect to Grinnell. I took the position that ITT had not violated any antitrust laws, as demonstrated by Judge Timber's final decision in our favor in the Grinnell case December 30, 1970, and that consequently ITT should not be required to make a complete divestiture of both Grinnell and Canteen.

On April 29, Mr. Rohatyn led the full-scale ITT presentation to Mr. McLaren, Mr. MacLaury of the Treasury Department, members of their staffs, and Mr. Kleindienst, with respect to the economic importance of Hartford to ITT and to the national economy. I was informed that there was no discussion of possible settlement terms in connection with that meeting.

Upon reviewing the materials which were left with Mr. McLaren in the course of the April 29 presentation (Exhibit B hereto), I felt that several points should be further amplified. Consequently, I suggested to Howard Aibel, ITT's General Counsel and to Mr. Rohatyn that a follow-up letter should be sent to Mr. McLaren. This was done by a letter of May 3, 1971 (Exhibit C hereto). In the course of my discussions with Messrs. Aibel, Rohatyn and Scott Bohon, ITT's Assistant General Counsel, with respect to preparing this letter, we also discussed what other steps might be taken to follow-up the economic presentation of April 29. It was decided that Mr. Rohatyn would attempt to set up another meeting with Mr. Kleindienst for about May 10, 1971. In preparation for such a meeting Mr. Bohon wrote a memorandum for Mr. Aibel dated May 4, 1971 (Exhibit D hereto), a copy of which he also gave to me, pointing out some of the practical financial

management and other problems which would be involved in a possible total divestiture of Grinnell and the importance of Grinnell to ITT's diversification.

It is my recollection that after receiving a copy of Mr. Bohon's May 4 memorandum, I then dictated a rough draft memorandum of my thoughts on this subject, which is the memorandum dated May 5, 1971 (referred to in paragraph 2 of this affidavit). It is my recollection that I sent this rough draft memorandum to Mr. Bohon. I do not recall whether I also gave a copy of this draft memorandum to Mr. Rohatyn, but I may have done so.

In the course of my conversations with Mr. Rohatyn, I recognized that his statement to Mr. Kleindienst on April 20 concerning a divestiture of Canteen and Grinnell might be interpreted as a commitment as to the outside limit to which ITT would be prepared to go. Accordingly, I agreed that if the subject of possible settlement terms came up in any subsequent meeting with the Justice Department and he was not successful in gaining acceptance of the idea of only a partial Grinnell divestiture, he could fall back to the statement he had made to Mr. Kleindienst on April 20. It was this statement by Mr. Rohatyn that I refer to in paragraph 1 of my rough draft memorandum of May 5 as "the offer of Grinnell."

However, because I earnestly did not believe that a total Grinnell divestiture was really necessary from the Justice Department's standpoint, paragraph 2 of my May 5 memorandum goes on to set forth possible courses of argument for counsel to develop on this subject in preparing for any future meetings. It was my thought that we should try to persuade the Department of Justice that a partial divestiture of Grinnell's Fire Protection Division should really be sufficient to satisfy the Government's

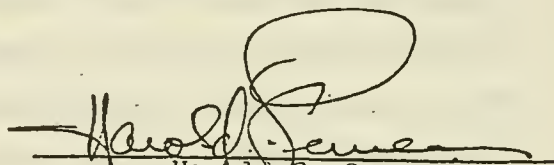
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4. After Mr. Rohatyn met with Mr. Kleindienst on May 10, he reported to me that the conversation was essentially confined to a repetition of the economic and financial points made during the April 29 meeting and in the follow-up letter of May 3. Mr. Rohatyn said that he briefly mentioned that the Justice Department should not require ITT to divest any portion of Grinnell other than its Fire Protection Division since that was the only part of Grinnell which was involved in any potential antitrust problems. But, Mr. Rohatyn reported that Mr. Kleindienst made no response to this point and that there was no discussion at all of any possible settlement terms.

5. Thereafter I received no further information about the Justice Department's reaction to our economic presentation

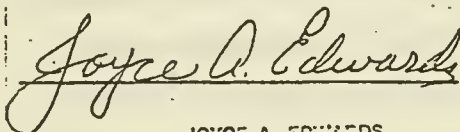
until June 17, 1971 when, as I have previously testified before the Commission, I was told by Mr. Rohatyn of a telephone conversation he had had that morning with Messrs. McLaren and Kleindienst in which they informed him that the Justice Department's "negotiating position" for a settlement of the three antitrust cases would permit ITT to retain Hartford but would require divestiture of four large companies - Canteen, Grinnell, Avis, Levitt - and would impose severe restriction against future domestic acquisitions and against possible reciprocity practices. As I have also testified, both Mr. Rohatyn and I were surprised and dismayed by that "negotiating position" since we considered that the price the Justice Department was suggesting for settlement was "very steep", and was one which in no event would we recommend that ITT accept (Tr. 9-12, 19). Prior to that time - as is shown in my May 5 rough draft memorandum - the maximum voluntary divestiture which I had even contemplated was divestiture of the two other companies whose acquisitions were directly challenged in the Government's lawsuits, Canteen and Grinnell. And even in that respect, as is illustrated by my May 5, 1971 rough draft memorandum, I was extremely reluctant for what I sincerely considered to be very valid reasons to agree to any complete divestiture of Grinnell. Furthermore, I should emphasize that any willingness on our part to even consider a divestiture of all of Grinnell was only in the context of an overall settlement which would require divestiture of two companies - Grinnell and Canteen. Certainly, when the Department of Justice, on June 17 and thereafter, insisted upon a divestiture of the four large companies, a total divestiture of Grinnell from my point of view was simply out of the question.

6. As the Commission is aware, Mr. McLaren disagreed for some time with our position that a complete divestiture of Grinnell should not be required as part of an overall settlement of the three antitrust cases. It was not until July 30-31, 1971 when a settlement agreement was reached, that he withdrew from this position.


Harold S. Geneen

Sworn to before me this.

12th day of June, 1972



JOYCE A. EDWARDS
Notary Public, State of New York
No. 30-16774, in and for Nassau County
City of New York County
Commission Expires March 30, 1973

(port, where the Supreme Court says that if the parties put themselves in this kind of a position that it is not a legal reason to forgive the violation of section 7.

Now, I do not think a prosecutor can quite take that attitude. I felt that we in the Antitrust Division had to have in mind the effect that it would have on all of these hundreds of thousands of shareholders, and the ripple effect it might have on the economy.

Senator KENNEDY. Mr. Kleindienst, were you acquainted with anyone from ITT before Mr. Rohatyn called in April?

Mr. KLEINDIENST. Was I acquainted with anybody?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. There is only one person in ITT who I have ever been acquainted with, and that is a Mr. Ryan who is employed by that company in Washington, D.C., and he lives in my neighborhood in McLean.

Senator KENNEDY. Could you describe that relationship? Is it purely social, or is it a relationship—

Mr. KLEINDIENST. It is a very casual social relationship. Once or twice a year the neighborhood has a Christmas party or neighborhood party, and then I see Mr. Ryan.

Senator KENNEDY. But there has never been a professional relationship between you?

Mr. KLEINDIENST. None at all, sir.

Senator KENNEDY. Had you ever heard of Mr. Rohatyn before his call?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. He was not introduced to you by anyone?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Did he refer to anyone in calling you?

Mr. KLEINDIENST. No, sir.

(Senator KENNEDY. He just called you out of the blue, and you took his call?

(Mr. KLEINDIENST. Well, he identified himself as a representative of the company. I think he knew who I was, my responsibilities in the Department.

Senator KENNEDY. And you took his call, without knowing what he was calling about, just because he was a director of ITT?

Mr. KLEINDIENST. Yes, sir, I did.

Senator KENNEDY. Even though you did not know him or had been unaware of him?

Mr. KLEINDIENST. Yes, sir, based upon the identification given, I did.

Senator KENNEDY. Now, in your conversation with Mr. Rohatyn, did you ask him whether he had already presented his arguments to Mr. McLaren?

Mr. KLEINDIENST. No. He prefaced his remarks by saying he was not a lawyer and he did not want to come in and discuss this thing from a legal standpoint, but based upon I call it economics, but I guess financial and economic considerations.

Senator KENNEDY. Well, you are certainly a lawyer.

Mr. KLEINDIENST. I used to be, Senator Kennedy.

Senator KENNEDY. And he, in this conversation, did it not seem appropriate—

FELIX G. ROHATYN

44 WALL STREET

NEW YORK 5, N.Y.

May 3, 1971

The Honorable Richard W. McLaren
Assistant Attorney General in
Charge of the Antitrust Division
Justice Department
Washington, D.C.

Dear Mr. McLaren:

I am writing this letter to amplify and augment a point which was made in the course of the discussion which we had in your office last Thursday, in the hope that its importance will not be overlooked even though it was not fully developed in the brief summary memorandum which was left with you, Mr. Kleindienst and Mr. MacLaury.

The point is that in the event a divestiture of the Hartford was carried out by ITT through some kind spin-off, ITT would be placed in a very difficult cash position which would severely impact its ability to compete in markets abroad. There could be as much as a 4. reduction in cash available to ITT. This shortfall in available cash would arise from the reduction of earnings by \$88.7 million on such spin-off while the fixed obligation to pay dividends of \$50,000,000 on the Series N preferred stock would continue, since as I explained extensively at the meeting, the exchange could not practically be made for the Series N stock. These reductions would in turn adversely affect borrowing power by an equal amount since every dollar of retained earnings would support a dollar of borrowing. This shortfall is illustrated by the following table:

The Honorable Richard W. McLaren

May 3, 1971

Page Two

1970 Earnings and Dividends with Proforma Adjustment
to Put N Preferred from Partial Year to Annual Basis

	<u>1970</u>	
	<u>Consolidated</u>	<u>Excludi Hartfor</u>
	(Millions)	
Net Income	\$353.3	\$265
Dividends Paid and Proforma for N Preferred		
All Preferreds Except N	\$40.7	
N Preferred for Hartford - Paid in 1970 Partial Year	\$26.0	
N Preferred for Hartford - Proforma to Bring to Annual Amount	<u>24.0</u>	<u>50.0</u>
Preferred Dividends	90.7	
Common Dividends	<u>71.4</u>	
Total	\$162.1 <u>162.1</u>	<u>162.1</u>
1970 Retained Earnings after Adjustment for 1970 to Put Hartford N Preferred on Annual Dividend Basis	<u>\$191.2</u>	<u>\$103.1</u>
Borrowing Capacity on 50/50 Overall debt/equity ratio	<u>191.2</u>	<u>103.1</u>
Total Cash Available From Retained Earnings	<u>\$382.4</u>	<u>\$207.1</u>
Shortfall in Cash Source to Reduction in Earnings due to Extension of Hartford and Retention of Series N Dividend Obligation.		\$175.1 <u>or drop of 46%</u>

The Honorable Richard W. McLaren
May 3, 1971
Page Three

While the cash problem would be ameliorated to some extent by spinning off the Hartford shares in exchange for ITT shares, thereby reducing partially the total dividend requirement for ITT common shares, the shortfall in available cash would still be a major concern for several reasons. Among these are (1) the Series N preferred dividend requirement of \$50,000,000 would remain and (2) the exchange ratio offered to ITT shareholders would undoubtedly have to be more than one share of Hartford for each share of ITT common tendered in order to induce the exchange. As a result of being required to offer a substantial discount the number of ITT shares retired could be as little as one half the 22 million Hartford shares, distributed, and certainly no more than three-fourths.

You will remember, I am sure, that at the meeting Dr. Saulnier pointed out that the credit worthiness of a borrower in foreign capital markets such as ITT is heavily dependent on the value which is placed on its common stock on the stock exchanges here, and on the credit rating which its outstanding debt securities receive. Dean Willis Winn, in his remarks particularly referred to the importance of the credit worthiness of a U.S. based company in the United States to successful financing abroad, a major requirement for companies with foreign operations like ITT's in light of the current balance of payments situation.

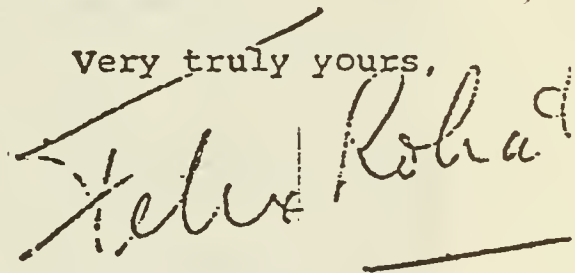
A major reduction in available cash such as that demonstrated above, will, in addition to having the obvious adverse operational impacts which inevitably accompany a contraction of cash, have an adverse impact on equity values as dividends on the common stock come under pressure. Such a cash shortfall would also undoubtedly have an adverse impact on the holders of outstanding ITT debt instruments and on ITT's ability to raise additional funds through debt financing here, but more significantly abroad.

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May 3, 1971
Page Four

Among the adverse consequences to the nation that would inevitably follow from the requisite contraction by ITT of its foreign operations is loss of market shares to major foreign competitors such as Ericsson, Siemens, Philips, Nippon Electric and Hitachi. Loss of market shares abroad can only result in a diminution of the cash which ITT would have otherwise repatriate to the United States. It would appear contrary to the national interests of this country to take conscious actions which would have such an adverse impact on the balance of payments.

Thank you once again for the courtesies which we extended to me, Dr. Saulnier, Dean Winn, and counsel. We very much appreciated the opportunity to discuss the overall policy implications of this situation with you, Mr. Kleindienst and Mr. MacLaury.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Felix Rohatyn", is written over a horizontal line. The signature is fluid and cursive.

cc: The Honorable Richard G. Kleindienst
Deputy Attorney General
Justice Department
Washington, D.C.

The Honorable Bruce MacLaury
Deputy Under Secretary for Monetary Affairs
Treasury Department
Washington, D.C.

\$100,000 with an agreement for a further \$100,000 matching contribution, and that in his view, it was a normal substitute for advertising expenditures of the San Diego Sheraton Hotel.

Senator BAYH. How is that kind of decision made? Is nobody on the board taken into consideration, the executive committee?

Mr. ROMATYN. Oh, no, Senator; we would no more go into a thing like that than we would the advertising budget of Avis. This is or should be a routine matter; maybe we will have some different rules in the future. But in any case, expenditures of that kind for normal business purposes would not come up to the board.

Senator BAYH. Were you ever on the board of ITT-Sheraton?

Mr. ROMATYN. No, sir.

Senator BAYH. Thank you, sir.

Judge McLAREN, let me throw a few more questions at you very quickly here if I may.

Could you enunciate a bit more specifically the whole reasoning that necessitated or that resulted in your changing your feeling about accepting the negotiation? What really concerns me is that the impact on stockholders is important, the impact on the economy is important. But if we have a corporate merger that violates the law, have we gotten ourselves in the position that if the merger is big enough, it doesn't make any difference what the law says?

Judge McLAREN. Senator, I think that doesn't really fairly express the situation. Let me put it to you this way. I think that a responsible enforcement officer has to take into account the overall impact of what he is bringing about. Up until they came in and proved to my satisfaction that it was going to tremendously weaken ITT and was going to cost their stockholders something over a billion dollars, I saw no reason for settling this case short of a divestiture. I thought that they made their bed, they could lie in it.

Now, when it became clear to me that we were talking about this kind of devastating effect on them, then I began to think in terms of what kind of a settlement we could work out that would achieve our antitrust objectives and would not get into this kind of a tremendous adverse effect upon the company and its shareholders. I use the paring-off kind of analysis that I explained a little while ago to Senator Hart.

If you look at ITT as it was before the Hartford acquisition and you say to yourself, what can I pare off of ITT such that if they had not owned those companies that are pared off, I would not have filed suit against their acquisition of Hartford? Now, one of the things that we objected to was the fact that the Grinnell Fire-Safety Division was tied into this complex and Hartford—

Senator BAYH. May I interrupt?

You have been very kind and I think you have already gone through this.

Judge McLAREN. Yes, sir.

Senator BAYH. And I remember it. It is in the record at least once or twice. I don't want you to have to labor through that again. I understand that weighing and slicing and trying to come up with something that you feel—and I have the greatest respect for your judgment and your expertise—would conform to the law.

What I was trying to get at is what philosophical responsibility do we have in Government? I am concerned about stockholders losing

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Mr. KLEINDIENST (continuing). "The nondivestiture of Hartford but they have to do other things." I said, "If that is good enough for you that is fine with me" and we called up Rohatyn.

The CHAIRMAN. We will recess now until after the rolleall.

(A recess was taken.)

The CHAIRMAN. Let us have order.

Senator Bayh, proceed.

Senator BAYH. Mr. Kleindienst, the whole thing is rapidly moving toward the witching hour.

The whole sum and substance of the reason for subjecting you and various individuals associated with ITT to these hearings goes to the thrust of the Government case against ITT and why its position was changed. When we just left to go to vote I think you said you really did not discuss the memorandum, the McLaren memorandum, with Mr. McLaren. That you just took his judgment and he said this is what ought to be and you just initiated it; is that accurate?

Mr. KLEINDIENST. Well, he outlined in precise detail his proposed framework for a settlement, and gave me his reasons for it. Those were very persuasive reasons.

Senator BAYH. And those reasons were, again?

Mr. KLEINDIENST. Beg you pardon?

Senator BAYH. Those reasons were, again?

Mr. KLEINDIENST. Well, he had become convinced with respect to the financial implications involved in the situation, having become so convinced because of the sensitive relationships of Hartford to the ITT conglomerate, that if they were going to keep that then they were going to be required to divest themselves of other assets substantially equal to Hartford, and also assets that would tend to reduce or eliminate the noncompetitive aspects of the ITT conglomerate.

Senator BAYH. Could I read from the memo to refresh your memory----

Mr. KLEINDIENST. Sure.

Senator BAYH (continuing). To see if the substance contained in the memorandum was discussed with you because it is complicated?

Mr. KLEINDIENST. Sure, you certainly may.

Senator BAYH. Did Mr. McLaren suggest in discussion or did you read what it says in the memo, and it says:

This will cripple ITT financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a \$500 million premium for Hartford * * *. The result, we are told, would be a loss of well over \$1 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity.

Did that----

Mr. KLEINDIENST. That is what I meant to imply when he said that he had become persuaded with respect to the financial impact of a divestiture of Hartford.

Senator BAYH. Then he says:

We have had a study made by financial experts and they substantially confirm ITT's claim as to the effect of a divestiture order.

Mr. KLEINDIENST. Well, I am sure he must have alluded to that but I----

Senator BAYH. In other words, the thrust was the damage the divestiture would have on ITT stock?

Mr. KLEINDIENST. Yes, sir; that is the reason Judge McLaren changed his mind, the variety of financial reasons, the balance of

8. On July 31, 1971, the ITT cases were finally settled. Whether ITT would have to divest itself completely of Grinnell was a principal matter of consideration between June 17, the date of McLaren's proposal, and July 31, and in ITT's eyes, a matter upon which any settlement hinged.

According to McLaren and Kleindienst, McLaren and his staff were responsible for the settlement. Kleindienst did not talk with McLaren about this matter at any time from June 17 until July 30. Mitchell and McLaren never talked with each other about the cases. There exists no testimonial or documentary evidence to indicate that the President had any part, directly or indirectly, in the settlement of the ITT antitrust cases.

McLaren was unaware of any financial commitment by ITT in regard to San Diego's hosting of the Republican National Convention until long after the negotiations had terminated. McLaren has stated ITT's contrmunion had nothing to do with the settlement.

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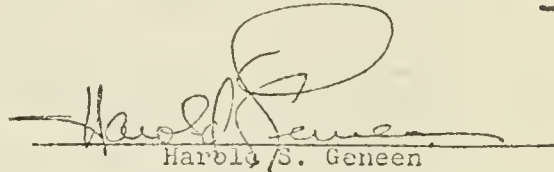
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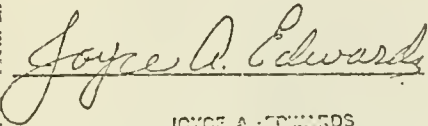
until June 17, 1971 when, as I have previously testified before the Commission, I was told by Mr. Rohatyn of a telephone conversation he had had that morning with Messrs. McLaren and Kleindienst, in which they informed him that the Justice Department's "negotiating position" for a settlement of the three antitrust cases would permit ITT to retain Hartford but would require divestiture of four large companies - Canteen, Grinnell, Avis, Levitt - and would impose severe restriction against future domestic acquisitions and against possible reciprocity practices. As I have also testified, both Mr. Rohatyn and I were surprised and dismayed by that "negotiating position" since we considered that the price the Justice Department was suggesting for settlement was "very steep", and was one which in no event would we recommend that ITT accept (Tr. 9-12, 19). Prior to that time - as is shown in my May 5 rough draft memorandum - the maximum voluntary divestiture which I had even contemplated was divestiture of the two other companies whose acquisitions were directly challenged in the Government's lawsuits, Canteen and Grinnell. And even in that respect, as is illustrated by my May 5, 1971 rough draft memorandum, I was extremely reluctant for what I sincerely considered to be very valid reasons to agree to any complete divestiture of Grinnell. Furthermore, I should emphasize that any willingness on our part to even consider a divestiture of all of Grinnell was only in the context of an overall settlement which would require divestiture of two companies - Grinnell and Canteen. Certainly, when the Department of Justice, on June 17 and thereafter, insisted upon a divestiture of the four large companies, a total divestiture of Grinnell from my point of view was simply out of the question.

6. As the Commission is aware, Mr. McLaren disagreed for some time with our position that a complete divestiture of Grinnell should not be required as part of an overall settlement of the three antitrust cases. It was not until July 30-31, 1971, when a settlement agreement was reached, that he withdrew from this position.


Harold S. Geneen

Sworn to before me this

12th day of June, 1972



JOYCE A. EDWARDS
Notary Public, State of New York
No. 30-190700-1, Westchester County,
City of New York
Commission Expires March 30, 1973

negotiations. Also, with respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties, that is, those bought or constructed after the main acquisition. With respect to Grinnell, he argued that ITT should be permitted to divest only part of Grinnell, that is, the fire protection business, which had been discussed during the trial of the case. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked about the negotiability of our provision on no acquisitions over \$10 million, and so forth. I told him we would negotiate on details, but that the basic provisions of the proposal were firm.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer, and had had a discussion with him concerning procedure.

On July 1, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

Negotiations between Carlson and Widmar on the one hand and Sailer on the other hand continued through the month of July—a part of which time I think from about July 10 to July 20, I was in London at the ABA meeting—and in the last few days of the month, Carlson and Widmar advised me that the matter was about wound up and that it would be helpful if I would sit in on one or two sessions to cover some final points. On July 30, I agreed that we would accept divestiture of the Fire Protection Division of Grinnell, rather than insisting on full divestiture. I did so because Messrs. Carlson and Widmar, with Mr. Hummel concurring, felt that separating the Fire Protection Division from the rest of Grinnell would be a procompetitive step, putting the rest of the industry on a more even competitive basis with Grinnell, which incidentally was the leader in that particular industry, which had had a competitive advantage by reason of its vertical integration and its broad contacts in the construction business.

There were certain other minor points still in dispute, and our meeting adjourned on the evening of July 30, which was a Friday, for Mr. Sailer to consult with his client. We reconvened our meeting on Saturday morning, July 31, and ironed out the final points. Mr. Sailer then contacted ITT—and I believe they polled the directors for final approval of the proposed settlement by telephone during the day. I then prepared a press release, for immediate distribution, announcing that we had reached an agreement in principle on the terms of consent decrees which, if approved by the courts, would terminate the three cases. This was done in order to head off any further newspaper speculation, and any possible insider trading when the markets reopened on the following Monday.

In conclusion, I want to emphasize that the decision to enter into settlement negotiations with ITT was my own personal decision; I was not pressured to reach this decision. Furthermore, the plan of settlement was devised, and the final terms were negotiated, by me with the advice of other members of the Antitrust Division, and by no one else.

That, as you may remember, is a part of your prepared statement and appears at page 16 [of the typewritten copy] of the record.

Mr. McLAREN. Yes. I think I used the term "discuss" there in the sense of "consult with."

Perhaps, the Senator has in mind one of the memorandums we turn in which indicates that I sent the *Canteen* case up to the Attorney General when I initially recommended suit.

I have reviewed the situation there. Mr. Mitchell had listed Continental Bakery as a former client of his former firm and only indicated that it had later been acquired by ITT. I think what happened was that I sent the proposed case up, and then he telephoned me about it and said he was disqualified, and then he sent it down to Mr. Kleindienst. I think that was the extent of any talks I had with him.

Senator KENNEDY. And Senator Hart, in discussion, questions, with Mr. Kleindienst, said:

"What discussions did you have with John Mitchell with respect to any aspects of the ITT cases?"

Mr. Kleindienst said "None," and Senator Hart said: "Mr. McLaren, Judge McLaren?"

And Judge McLaren said:

"I had none, sir."

Mr. McLAREN. I think that would be correct. There is a "buck" slip showing that the Attorney General's executive assistant simply bucked the matter down to Mr. Kleindienst.

Senator KENNEDY. Mr. Chairman, in the Department documents made a part of the record of this hearing there is, as Mr. McLaren just mentioned, the memorandum from Mr. McLaren, dated April 7, 1969, addressed to Mr. Mitchell which states as follows:

The attorneys for ITT are coming in to talk about the Canteen acquisition tomorrow morning. I expect to tell them we are recommending suit, including a prompt motion for temporary restraining order, unless the merger is abandoned.

And the second document is a memorandum dated April 7, 1969, from the executive assistant to the Attorney General, addressed to Mr. Kleindienst, which reads as follows:

This is a proposed civil antitrust complaint to prevent ITT from acquiring Canteen Corporation, a nationwide food service and vending company.

This looks like a good case under section 7 of the Clayton Act. There is a vertical aspect in that Canteen will be in a position to muscle its competitors and potential competitors out of food service and vending at the installations of ITT and its affiliated companies.

Canteen and ITT will also have the power to expand the former's business by anticompetitive reciprocity action directed at suppliers of ITT and its subsidiaries. Moreover as alleged in the complaint, the merger will tend to cause similar mergers by Canteen's competitors simply seeking protection against the effects of this one or aggressively seeking similar competitive benefits.

Dick McLaren has talked to the Attorney General—

and it says "A.G."

about this case so that he is aware of it. I don't believe he is aware that it is now "ripe." You may want to talk to him about it on the phone.

And then it continues:

As far as your signing the complaint is concerned, I dare say you can scratch out the A.G.'s typed name and then sign yours as Acting Attorney General.

And, then, at the bottom of the memorandum there is a handwritten notation: "To McLaren. O.K."

Mr. KLEINDIENST. My answer is categorically "No", Senator.
Senator HART. Judge McLaren?

Mr. McLAREN. Absolutely not. The Attorney General did not talk to me about the case. I did not talk to him about the case. I never heard of Mrs. Beard, if that is her name, until this thing broke, and knowing what I know about this whole settlement thing, her memorandum is absolutely incredible.

Mr. KLEINDIENST. I will join in that statement in total.

Senator HART. And, Mr. McLaren, your testimony is that in the filing, the initiating of the original action against ITT in this series of cases, you simply presented your recommendation, with the lawyer's summary argument as to why, and then Mr. Kleindienst agreed that same day to file action; is that right, and did in fact sign?

Mr. KLEINDIENST. Yes, sir.

Mr. McLAREN. I would not know whether it was the same day or not, Senator. I would kind of doubt it, frankly. It was my custom to send cases up maybe 10 days ahead, or a week ahead, or sometimes 3 or 4 days ahead, when we want them filed, and it would take a little while to get approval. These gentlemen had other things to do, and so on, but basically I sent the memorandum up, and in due course it was approved and I filed the case.

Senator HART. I think some of us are aware that a suggestion has been made that even to initiate these lawsuits you had to threaten to resign.

Mr. McLAREN. That is not so. I never threatened to resign, Senator. I told you earlier I had a three-part understanding with the Attorney General and with Mr. Kleindienst. If they had not kept their part of that bargain I would have resigned. I would not have threatened to.

Senator HART. Well, I will pass. I know that there are other questions and perhaps others will cover them. Knowing the complexity that attaches to a significant antitrust action, I have wondered what goes on, how it is decided whether to sue or not, and when the decision has been made to sue, what it is that persuades a consent decree to be obtained. I think that no matter how complex and how difficult, and how argumentative and how many economists you can get on 15 sides, and how many lawyers you can get on 15 sides of it, the time may be now to attempt on the part of an oversight subcommittee to get into detail and to study all of the factors that are at work, which is for another day.

But, may I pass at this time, Mr. Chairman.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Mr. Chairman, thank you. I think both Mr. Kleindienst and Mr. McLaren, and Mr. Rohatyn realize full well that none of these questions are terribly easy for those who are posing them, and certainly for those who are responding to them.

And I think in light of what Mr. Kleindienst requested, that we try and develop the fullest possible information and facts on these cases, I think and I hope all of us feel we are asking him in that light, and that you would understand certainly our responsibility in asking in that respect.

Some of the areas that I would like to inquire into have been touched on, both by Senator Hart and by your own comments, but in any event I think it is useful and helpful to the general understanding to perhaps have these responses, along the lines of questions that

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memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating \$1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. McLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. McLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a \$400,000 contribution from ITT to the city of San Diego?

Mr. McLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. McLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

when they offered me the job. I made three conditions: that we would have a vigorous antitrust program; that we would follow my beliefs with regard to what the Supreme Court cases said on conglomerate mergers, and the restructuring of the industry that I thought was coming about in an almost idiotic way; and third, that we would decide all matters on the merits, there would be no political decision.

The CHAIRMAN. Now, is that correct in this case?

Mr. McLAREN. That is correct in this case, absolutely. I might add that the Attorney General and Mr. Kleindienst lived up to their commitment.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. As I construe your testimony, Judge McLaren, Mr. Kleindienst did not actively participate in the negotiation of the settlement at all?

Mr. McLAREN. All Mr. Kleindienst did was arrange that one meeting, as far as I am concerned. And during the course of that meeting, when ITT made its presentation, I was the chairman of the meeting. Mr. Kleindienst sat off on my left, and listened, so far as I recall, and, well, none of us had much to say, but he did not do really anything in any stage of the negotiations except arrange for that one meeting and approve my proposal for settling the thing after I became convinced that the 250-odd-thousand shareholders of ITT would suffer more than a \$1 billion loss if we proceeded and were successful in forcing divestiture of Hartford.

Senator ERVIN. Did he make any suggestion to you as to what the details of the negotiations should be, or what the details of the settlement should be?

Mr. McLAREN. He did not, and I did not even keep him informed as to what we were doing in the negotiations until—I think he is probably right—I telephoned him the night before we actually put the thing out and said I think that they are going to cave in on the last couple of points and we will probably announce it tomorrow.

The CHAIRMAN. And that was the course you usually followed to keep him advised of matters in your department?

Mr. McLAREN. Matters of major importance, yes, sir.

Senator ERVIN. I understand from the testimony that has been given that Attorney General Mitchell absolutely disqualified himself from any connection with these suits and proposed suits, and with the negotiations on the settlement, on the grounds that his firm at one time had represented one of the affiliates of ITT?

Mr. McLAREN. Yes, sir, that is correct.

Senator ERVIN. In other words, your testimony is that you and the members of the Antitrust Division staff conducted the investigations, and that the decision of the Government was based solely on the opinions which you and the members of your staff in the Antitrust Division had after considering all of the matters involved, and all of the implications of those matters?

Mr. McLAREN. That is right, sir.

Senator ERVIN. Now, Judge, I practiced law a long time, and I have participated in compromises in many cases, never one of any great magnitude, but my experience is that when people settle litigation they do so for approximately the same reason that Hamlet stated in his soliloquy: they are uncertain as to what the courts are going to.

Mr. KLEINDIENST. Well, I understood that Mr. Rohatyn had only one function in this situation. That was to first make a financial-economic presentation to the Department. That was done on April 29. Then, when Mr. McLaren brought up the proposed settlement outline, I presume because of the fact that Mr. Rohatyn was the head of the company at the April 29 meeting is why he wanted to call Mr. Rohatyn on June 17 to tell him what we would be willing to do.

I understand that thereafter, based upon Judge McLaren's testimony, he then negotiated the settlement with the company lawyers.

Senator KENNEDY. He was the one who worked out the settlement with the I.T. & T. directors?

Mr. KLEINDIENST. With the lawyers.

Senator KENNEDY. With the lawyers?

Mr. KLEINDIENST. Yes, sir. I never did anything in that regard.

Senator KENNEDY. Mr. McLaren, did you gather the impression that the attorneys of I.T. & T. understood this relationship, too? I mean, at any time, did any of the attorneys for I.T. & T. say, Mr. Rohatyn is the fellow sort of to work through?

Judge McLAREN. I had never heard of Mr. Rohatyn before this April meeting. Then, when we came up with our proposition in June, I told Mr. Rohatyn that if that was acceptable, we would, from there on, deal with the lawyers. When Mr. Sailer came back the next day and said, OK let's sit down and negotiate, I took that—particularly because of the information he had; it was obvious he had gotten it from Rohatyn.

From there on, I dealt with their lawyers.

Senator KENNEDY. Well, you can see part of the problem. ITT, in its press release, said agreement was reached with the Justice Department only after hard negotiations between "our outside legal counsel" and then Assistant Attorney General, Richard McLaren, and his staff.

"Neither Mrs. Beard nor any other legal counsel were authorized to carry out such negotiations."

Judge McLAREN. That is true.

Senator KENNEDY. I thought you just said you felt that Mr. Rohatyn was the negotiator.

Judge McLAREN. I said I only had two contacts with him, and we put it up, an outline of settlement to the company, take it or leave it: if you are going to take it, come back and we'll negotiate it out with your lawyers.

They sent their lawyers in, and from there on, we negotiated with their lawyers.

Now, there are a lot of things we negotiated about. There are many details. Senator. If I were to go back and reconstruct, I could probably spot things in the decrees that were points at issue that they were very concerned about, and so on and so on. Some of them are of some importance.

As Mr. Kleindienst said, we changed our deal, in effect, on Grinnell. We also changed the wording of the "No further acquisitions" provision. I originally had had in there that on acquisitions of \$10 million, they had to affirmatively prove that it would not have an adverse effect on competition.

We finally came to the conclusion that that was probably unrealistic, and we developed a new formula. Those were important negotiations.

Mr. McLaren, I have in my hand a copy of the decree, the consent decree. It is 15 typewritten pages on legal-sized paper. It took quite a while to pound that out, did it not?

Judge McLAREN. Yes, sir. I think that is only one of the three, is it not?

Senator HRUSKA. This is the one in the *ITT-Hartford* case, that is right.

Judge McLAREN. But there were three cases.

Senator HRUSKA. If there were three decrees, then we would have to have three bundles of paper like that which I have here.

Judge McLAREN. That is right.

Senator HRUSKA. How many conferences would there have been by way of negotiation with the respective legal staffs of the Department of Justice, Treasury, the lawyers representing the ITT and these other corporations?

How many conferences do you think that would have been?

Judge McLAREN. Well, just as a guess, Senator, there probably were 20 or so. But I think the lawyers think of negotiations as the kind of thing that started after I made our proposal to Mr. Rohatyn and he came back and said—and his lawyer asked for an appointment and discussed the broad basics of our proposal, and I told him that that was the pattern that we were going to stick with, but we would negotiate as to all the details of the thing. And from there on, starting about the—I would guess around the 24th of June—he called me. I think, on the 18th and we made an appointment for the 24th. It is in my prepared statement. And from there on, that was really the first negotiating session on the 24th, when he came in and wanted to know how broad the negotiating limits were here. I kind of laid out the ball park.

At the end of the month, I brought him together with the two trial men and they met almost daily, then, until the latter part of July, hammering out all these details. And there were three decrees.

Senator HRUSKA. Now, then, my question is at how many of those negotiating sessions was Mr. Kleindienst present?

Judge McLAREN. He was at none of those sessions. I say again, Senator, I think that I was responsible for the basic proposal of this thing. I was responsible personally and with my assistants in the Antitrust Division for all of the negotiations. I do not think any lawyer who knows anything about negotiating would say that Kleindienst had anything to do with it.

Senator HRUSKA. Then Mr. Rohatyn was notified and he presumably took it up with his principals and that was on July 30 and the announcement was made on the 31st, which was a Saturday?

Judge McLAREN. No, we did not have any contact with Rohatyn then. My dealings at that time were entirely with Mr. Sailer, the trial counsel. Friday was the 30th. We broke up and he was to contact the clients and clear certain things that we had proposed. Then he came back on Saturday morning and we ironed out some more things. Then on Saturday afternoon, Sailer went back by telephone to the ITT people and he got their approval. When he came back, he said, we have got a deal, and I put out a press release. It was my deal.

Senator HRUSKA. In the negotiating sessions, Mr. Kleindienst was not present?

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Senator KENNEDY. Mr. Kleindienst, at the time you were meeting with Mr. Robatyn, did Mr. McLaren know about these various meetings which you have itemized today?

Mr. KLEINDIENST. He knew about the April 20 meeting. He would have known about the April 23 meeting.

Senator KENNEDY. Well, he was there at that one.

Mr. KLEINDIENST. Right. I do not believe I told him about the other meetings.

Senator KENNEDY. Well, Mr. McLaren, did you know or did you have any way of knowing?

Judge McLAREN. No, sir, I was unaware of any further meetings that they may have had.

Senator KENNEDY. And there were no memoranda or records of any of those meetings, is that right, Mr. Kleindienst?

Mr. KLEINDIENST. I did not, unless Mr. Robatyn did. I made no memorandum of them.

Senator KENNEDY. Could you tell us how the final settlement differed from the recommended settlement, Mr. Kleindienst, in this case? Do you remember that?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Mr. McLaren?

Mr. KLEINDIENST. Yes—well, know and I have had my memory refreshed. The final settlement differed from the recommended settlement in that, instead of a complete divestiture of Grinnell, only a divestiture of Grinnell's fire protection business was required. I believe that was the only, as far as I know, the only exception to what was presented to Mr. Robatyn on June 17 on the telephone. There might be something else, but that is the only thing I know.

Senator KENNEDY. Is there any way of finding out specifically what changed their minds in terms of that difference from the initial—final settlement, from the recommended settlements?

Mr. KLEINDIENST. I believe Judge McLaren testified about it in his prepared remarks. My recollection of that, although they will speak for themselves, is that it was recommended to him by his staff.

Senator KENNEDY. Mr. McLaren, could you tell us at what point or date the trial attorneys of the Antitrust Division ceased making preparations for the trial?

Judge McLAREN. I would guess they probably started concentrating on the settlement negotiations when I put them in charge of them about July 1. I remember there were depositions on June 18 and—

Senator KENNEDY. They went ahead with those, did they not?

Judge McLAREN. They did; yes, sir.

Senator KENNEDY. That was after you notified them. As I remember, you said you notified them on the 17th, did you not?

Judge McLAREN. Yes, that is right.

Senator KENNEDY. Then at some time, I think you indicated in late July, you notified Mr. Kleindienst that you were prepared to make some kind of an indication of the terms for the settlement; is that right?

Is that right, Mr. Kleindienst?

Judge McLAREN. No; wait. Let us go back a minute. When I put the two men in charge of negotiations on July 1, the matter was still being very closely held within the Department on a, what we called "need

I believe that at that meeting Mr. McLaren was in there at his regularly scheduled 8:15 meeting in the morning, so it would have been in the early part of the morning on June 17 that we called Mr. Rohatyn. Mr. McLaren then read to Mr. Rohatyn, over the telephone, his proposed settlement structure. And Mr. Rohatyn—and we used the telephone in a conference phone so that both Mr. McLaren and I could listen to Mr. Rohatyn, and he was also able to hear both of us speak—and Mr. Rohatyn was making notes with respect to the matters given over the telephone, and he asked some questions about it, which Mr. McLaren answered. I believe Mr. McLaren said that if your company is willing to approach this matter on this basis, that you can instruct your attorney to contact me in my office and we will commence settlement negotiations.

Mr. Rohatyn said that he had to communicate that information to his superiors, and that if I.T. & T. wanted to go forward on that basis that their attorneys would contact Mr. McLaren.

I learned that they had agreed to contact Mr. McLaren to discuss settlement on that basis, because on June 29 Mr. Rohatyn again came to my office, and his purpose in coming to my office at that time was to complain about the rather rigid attitude that Mr. McLaren was taking with respect to these settlement negotiations, to complain about the rather punitive nature of the settlement negotiations, and the posture of the Government, and that he felt, in his opinion, they were unreasonable. I told him that I would not inject myself into those settlement negotiations, that that was a problem between the attorneys for I.T. & T. and Mr. McLaren and his staff, and that I would do nothing about it. I did not relate that conversation to Mr. McLaren. I think I indicated to Mr. Rohatyn that I was not going to do it. They had their attorneys working for the Antitrust Division, and that they could work on the basis outlined by Mr. McLaren on that June 17 conversation.

Mr. Rohatyn came into my office again on July 15, again for the same reason, and we had substantially the same kind of a conversation. He was really upset and complaining about the rather hard, stringent, rather inflexible attitude of McLaren and his staff with respect to the settlement negotiations. And I again said the same thing to Mr. Rohatyn, that Mr. McLaren had outlined the basis of the settlement negotiations on June 17, and that was a matter between Mr. McLaren and his staff and the attorneys for his company. I did not communicate this visit to Mr. McLaren or anybody on his staff.

The settlement came about on Saturday, July 31, and Mr. McLaren will go into the steps leading up to that. My recollection is that Mr. McLaren called me on Friday evening to tell me that the Government and I.T. & T. had worked out a settlement in this matter, and that it would be announced on Saturday. I had not talked to Mr. McLaren about any aspect of this matter between June 17, 1971, and that Friday evening on July 30, 1971. I would ordinarily have seen Mr. McLaren some time during that period, but he had been out of the country at the American Bar Association convention in London, and I do not believe he returned until the latter part of July.

But, in any event, I had no further conversations with him. The next time that I saw Mr. Rohatyn was on September 14, 1971, when he came to my office, and that was just a very brief social visit. He

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Mr. KLEINDIENST. No; I might have talked to Governor Nunn two or three times since I have been in the Government. I know I had one conversation in which he was interested in being a judge. And I think that is the most lengthy conversation I even had with him.

The CHAIRMAN. Your time is up.

Senator COOK. Mr. Kleindienst, just a couple of very short questions. There was, as a matter of fact, a great divergence of opinion within the administration relative to, not yourself but Mr. McLaren's policy in the Antitrust Division; was there not?

Mr. KLEINDIENST. Not only in the administration but in the country, in the legal profession.

Senator COOK. As a matter of fact, the Stigler report, that had been filed, stated that, and I quote: "vigorous action on the basis of our present knowledge of conglomerates is indefensible." And the report went on to say, and I quote again from the report which was made to the President of the United States:

We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon.

So there was a divergence of opinion, was there not, and, as a matter of fact, as the result of Mr. McLaren's position as head of the Antitrust Division, the largest corporate divestiture that ever took place in the history of the United States occurred as a result of his actions; did it not?

Mr. KLEINDIENST. Yes; not only that, but an agreement against further acquisitions.

Senator COOK. For a period of 10 years.

Mr. KLEINDIENST. Right.

Senator COOK. And as a matter of fact, at the time that this debate was going on and his actions were going on, the former head, under the former President, of the Antitrust Division took the position that the position of this administration in its antitrust policies was wrong?

Mr. KLEINDIENST. That is correct.

Senator COOK. Did he not?

Mr. KLEINDIENST. Dr. Turner.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. Birch.

Senator BAYH. Mr. Kleindienst, the last question I asked before deciding there was nothing to be gained in pursuing other questions was something to the effect that were you aware of the Rapchen report and you—I mean, were you aware of its specifics—and you said, as I recall, you were not aware of any of the specifics at all?

Mr. KLEINDIENST. Never read it.

Senator BAYH. And, as I recall the hearing, at least part of the answer to the last question was that your reliance on Judge McLaren was really the whole reason this case was resolved as it was.

Mr. KLEINDIENST. You mean that Judge McLaren recommended this solution?

Senator BAYH. Yes, sir.

Mr. KLEINDIENST. That is the only reason why I went along with it. He recommended it.

Senator BAYH. Was that recommendation and the reasons for it that compelled you to accept his judgment contained primarily in the

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memorandum that we have all read? It is on page 111 of the record, "Memorandum for the Deputy Attorney General Re Proposed Procedure in ITT Merger Cases." If you are not familiar with the Ramsden memo, are you familiar with that memo?

Mr. KLEINDIENST. I do not have any present recollection of having read it. Mr. McLaren would send me a memorandum and then what we would usually do is discuss it, which would save me a lot of time and it also gave him an opportunity to present it, I think, a little bit more clearly. I might have read it, Senator Bayh. I do not know.

Senator BAYH. This is a memorandum, if I might try to ask you to refresh your memory, which was dated June 17, 1971, and which lists in some detail the reason why you are recommending the settlement, if it is approved, and it is "Approved. June 17, 1971. RGK."

Mr. KLEINDIENST. Right.

Senator BAYH. Then I understand that after this ITT was called.

Mr. KLEINDIENST. Right.

Senator BAYH. Does that refresh your memory?

Mr. KLEINDIENST. Yes, it does. Now I know the memorandum you are talking about. Whether I read it or not in its entirety is doubtful to me. Mr. McLaren would have discussed it with me and I would have approved it in writing just so it would show it was approved in his file. After that we called Mr. Rohatyn and Mr. McLaren outlined the broad outlines of the proposed settlement to him.

Senator BAYH. When a man like Judge McLaren, your assistant, makes recommendations like that, of this consequence, is it your judgment to take the memorandum and its discussion at face value or do you try to substantiate it with, from other sources?

Mr. KLEINDIENST. No, I have never tried to substantiate a recommendation or opinion of Judge McLaren from any other source. I have read complaints or memoranda and have raised questions about it, and then have had a conference, and had it explained to me, and I guess, Senator Bayh, the antitrust law is probably the most specialized form of the art that we have. Consequently, you have to make a judgment whether you have got a competent lawyer in the field, and I do not think anybody challenges McLaren on that; and then, second, whether he is a man of integrity, so that when he tells you something you know what his reason for telling you something is. I think it would have been presumptuous for me to go out and hire a consultant to check on McLaren in a field of law about which I then knew very little and about which I still know very little, although I have learned a little bit more about it.

Senator BAYH. I must say I have the greatest sympathy with you in your description of the antitrust law being complicated. I would find it much more so than you. And I would be inclined, I suppose, to rely on a man with Judge McLaren's expertise. I keep coming back to this inconsistency and perhaps you can help us out on this. If we are to accept your reasoning, rationale, which I am prepared to do, relative to the ITT case, why is it again you did not go along with Mr. McLaren's advice on the Warner-Lambert case?

Mr. KLEINDIENST. That is the one exception, and I guess that hopefully proves the rule. When the Warner-Lambert situation came up, as I try to recollect it again, I was out of town, I got a call from Mr. Mitchell, wherever I was, on a Friday afternoon or a Saturday morning, indicating that they had come up with a recommendation

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[Mr. KLEINDIENST (continuing). "The nondivestiture of Hartford but they have to do other things." I said, "If that is good enough for you that is fine with me" and we called up Rohatyn.

[The CHAIRMAN. We will recess now until after the rolleall.

(A recess was taken.)

The CHAIRMAN. Let us have order.

Senator BAYH, proceed.

Senator BAYH. Mr. Kleindienst, the whole thing is rapidly moving toward the witching hour.

The whole sum and substance of the reason for subjecting you and various individuals associated with ITT to these hearings goes to the thrust of the Government case against ITT and why its position was changed. When we just left to go to vote I think you said you really did not discuss the memorandum, the McLaren memorandum, with Mr. McLaren. That you just took his judgment and he said this is what ought to be and you just initiated it; is that accurate?

Mr. KLEINDIENST. Well, he outlined in precise detail his proposed framework for a settlement, and gave me his reasons for it. Those were very persuasive reasons.

Senator BAYH. And those reasons were, again?

Mr. KLEINDIENST. Beg you pardon?

Senator BAYH. Those reasons were, again?

Mr. KLEINDIENST. Well, he had become convinced with respect to the financial implications involved in the situation, having become so convinced because of the sensitive relationships of Hartford to the ITT conglomerate, that if they were going to keep that then they were going to be required to divest themselves of other assets substantially equal to Hartford, and also assets that would tend to reduce or eliminate the noncompetitive aspects of the ITT conglomerate.

Senator BAYH. Could I read from the memo to refresh your memory—

Mr. KLEINDIENST. Sure.

Senator BAYH (continuing). To see if the substance contained in the memorandum was discussed with you because it is complicated?

Mr. KLEINDIENST. Sure, you certainly may.

Senator BAYH. Did Mr. McLaren suggest in discussion or did you read what it says in the memo, and it says:

This will cripple ITT financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a \$500 million premium for Hartford * * *. The result, we are told, would be a loss of well over \$1 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity.

Did that—

Mr. KLEINDIENST. That is what I meant to imply when he said that he had become persuaded with respect to the financial impact of a divestiture of Hartford.

Senator BAYH. Then he says:

We have had a study made by financial experts and they substantially confirm ITT's claim as to the effect of a divestiture order.

Mr. KLEINDIENST. Well, I am sure he must have alluded to that but I—

Senator BAYH. In other words, the thrust was the damage the divestiture would have on ITT stock?

Mr. KLEINDIENST. Yes, sir; that is the reason Judge McLaren changed his mind, the variety of financial reasons, the balance of

Mr. KLEINDIENST. No, sir. I think one of the first acts that I committed as the Deputy Attorney General in 1969 and then in these cases as the Attorney General was filing the complaints in the *Cuttern*, *Grinnell*, and *Hartford* cases. Mr. McLaren did, as he does in those cases, prepare a prosecuting memorandum, and he presents it to you and he discusses it with you. After the discussion, I signed the complaints that day in my offices, and all three cases, and they were presented.

The CHAIRMAN. You had to authorize the appeals also, did you not?

Mr. KLEINDIENST. Yes, sir. I believe the statute requires the affirmative participation of the Attorney General in many aspects of antitrust law.

Senator HART. What discussions did you have with John Mitchell with respect to any aspect of the ITT case?

Mr. KLEINDIENST. None.

Senator HART. Mr. McLaren, Judge McLaren?

Mr. McLAREN. I had none, sir.

Senator HART. I guess I should ask Mr. Rohatyn that same question.

Mr. ROHATYN. None, sir.

Senator HART. Because you thought you were negotiating a settlement; did you not?

Mr. ROHATYN. I did not think that I was negotiating a settlement, sir.

Senator HART. What did you think you were doing, giving an economics course?

Mr. ROHATYN. I was trying to, sir.

Senator HART. You were trying to negotiate a settlement?

Mr. ROHATYN. No, sir.

— Senator HART. Trying to give an economics course?

Mr. ROHATYN. I was trying to make an economic case, sir, of hardship.

Senator HART. To persuade a particular settlement to be arrived at, did you not?

Mr. ROHATYN. Persuade Mr. McLaren and the Antitrust Division that this position on the Hartford or the divestiture of Hartford by ITT would be a very harmful thing to the company.

Senator HART. Now, what discussions did you have with Mr. Mitchell?

Mr. ROHATYN. None, sir.

Senator HART. And these meetings that you participated in, Mr. Rohatyn, would you say that Mr. Kleindienst was not participating in the negotiations of the settlement?

Mr. ROHATYN. Yes, sir; I would say that very definitely. I would say that Mr. Kleindienst was very polite and listened to me, and kept repeating to me essentially that the discussions and the negotiations and the settlement would have to be handled by Mr. McLaren in the Antitrust Division.]

Senator HART. And to put it bluntly, the presence of the boss in those meetings was without significance?

Mr. ROHATYN. Sir, as I said, I considered that the final settlement was a very punitive one and a very harsh one.

left the meeting before its conclusion. The second meeting convened at 1:30 p.m. Present, in addition to myself, were Mr. Lasker, chairman of the New York Stock Exchange, Mr. DeNunzio, vice chairman of the New York Stock Exchange, Mr. Haack, president of the New York Stock Exchange, and a Mr. Brandow who, I believe, was their counsel. Mr. Robatyn joined the meeting at 1:40; Mr. Perot, Mr. Myerson, and Mr. Martin, who I believe, was Mr. Perot's counsel, joined at 2:10, and Mr. Flanigan at 2:30. My records show that my next appointment that day was with an official of the Department at 3:04. It is my recollection that all participants in the second meeting left my office together.

Mrs. Dita Beard. My one encounter with Mrs. Beard was on May 1, 1971, at the executive mansion of Governor Nunn during a reception and buffet supper.

As I recall this incident, Mrs. Beard approached me to complain about the treatment that ITT was receiving at the hands of the Justice Department. I advised Mrs. Beard that I had disqualified myself with respect to this litigation and could not and would not discuss it with her. I suggested that the proper course would be for the appropriate people representing ITT to take the matter up with the appropriate people in the Justice Department. A few minutes later, Mrs. Beard again approached me on the subject matter, I believe twice, and I repeated my desire not to discuss the subject matter and advised her that I did not appreciate her pressing the subject.

The third point, Mr. Chairman, related to the selection of San Diego as the site of the Republican 1972 Convention. I was not involved in any way in any negotiations which led to the selection of San Diego as the site of the convention by the Republican National Committee.

I have never talked to any representative of ITT about the San Diego site or any matter relating thereto.

I have never talked to the Deputy Attorney General or the Assistant Attorney General in charge of the Antitrust Division about the San Diego convention site or anything relating to any discussions or negotiations with ITT or any of its subsidiaries.

I do not recall when or how I first learned of the Sheraton Hotel Corp.'s participation and support for the holding of the convention in San Diego, but I believe that I first read about it in the newspapers.

I do not as of this date know what arrangements, if any, exist between ITT or the Sheraton Hotel Corp. and the Republican National Committee, or between ITT or any of its subsidiaries and the city of San Diego or any agency thereof.

Mr. Chairman, I trust that these facts will clarify this record here. I trust that they make it unnecessary for me to deny the statements contained in the memorandum dated June 25, 1971, attributed to Mrs. Beard. At the risk of redundancy, however, I welcome this opportunity to state under oath that the statements in that memorandum which relate to me are totally false and totally without foundation.

In closing, Mr. Chairman, I would emphasize the fact that there is pending before the Senate, the President's nomination of Richard G. Kleindienst to be the Attorney General of the United States.

As one who has worked closely with Mr. Kleindienst on a daily basis for the past 3 years, I am happy to have this opportunity to

Senator KENNEDY. Was Mr. Flanigan in on LTV?

Judge McLAREN. No; not other than if he was the one I talked to to recommend an expert. And I think I may have discussed what I intended to do there with Mr. Kleindienst from the financial standpoint.

Senator KENNEDY. Why would you discuss that with him? Is there any—I am just inquiring. I am just interested.

Judge McLAREN. Do you understand the LTV decree? It is a very broad decree. It was a very important case at the time. LTV was in very bad trouble when we began analyzing it in those terms. I think I might have consulted with others—Paul McCracken, perhaps. I wanted to be sure I was right on this thing, that is all.

Senator KENNEDY. Sure.

Well now, to get back—are you unsure as to who recommended Mr. Ramsden? It was either Mr. Flanigan or the Treasury—

Judge McLAREN. Either Flanigan or MacLaury, I would say. I have no specific recollection, but that is the best I can remember.

Senator KENNEDY. In any event, he was the one who took this material, as I understand it, provided by ITT and did the survey and the study and made a recommendation to you. Is that right?

Judge McLAREN. Both Ramsden and MacLaury.

Senator KENNEDY. Took the ITT material?

Judge McLAREN. Yes.

Senator KENNEDY. Both of them. And then they made the recommendation?

Judge McLAREN. Right.

Senator KENNEDY. And the evaluation of the ITT material?

Judge McLAREN. Well, they made their own evaluation, I think, as well as reviewing what ITT had furnished.

Senator KENNEDY. At any time did you talk about the ITT case with Mr. Flanigan or anyone in the White House?

Judge McLAREN. I do not believe so.

Senator KENNEDY. So you did not have any communication with anyone in the White House in any way about the ITT case?

Judge McLAREN. Not that I recall at this time, and I think I would recall if I had.

Senator KENNEDY. Sure. But they did the study, these two men.

Have the materials that have been provided by ITT, are they available?

Judge McLAREN. Oh, yes; certainly.

Senator KENNEDY. They are available to the members of the committee if they want them?

Judge McLAREN. Surely; yes.

Senator KENNEDY. Was there any memorandum kept, Mr. Kleindienst, that you know of, of the meeting that was held? Is there any record or recording kept of the meeting about who said what to whom?

Mr. KLEINDIENST. Not that I know of. If there is, Mr. McLaren has it.

Senator KENNEDY. Do you know of any?

Judge McLAREN. I would have to check. We had a lot of people at that meeting and somebody may have taken notes or made a memorandum. I am not sure.

Senator KENNEDY. Mr. Rohatyn, did you keep any notes on that?

memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating \$1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. McLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. McLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a \$400,000 contribution from ITT to the city of San Diego?

Mr. McLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. McLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

HERMAN: Let me ask you one other in-their-shoes question. Do you think it was right and proper and also wise for IT&T to make this large pledge to an organization connected with the Republican Party while it was engaged in this litigation or these negotiations?

JUDGE McLAREN: I just have no way of commenting on that. I knew nothing about it. It never came to my attention, even where the convention was going to be, until long after our negotiations. I never met Mrs. Beard, I never had anything to do with that. According to their story, as I understand it, for the big hotels to make contributions, particularly on a big opening, as I understand that Sheraton's going to have out there, that's a pretty customary thing.

HERMAN: But by five times customary. They are the second largest chain, they gave five times as much, I understand, as the first largest chain.

JUDGE McLAREN: Well, they've got three hotels - I don't -- I can't argue that -- I knew nothing about it at the time, and I guarantee you that that Republican convention site and ITT's contribution had absolutely 100 per cent nothing to do with this settlement that I made.

STRAWSER: If, as Mrs. Beard claims, that memorandum that did link the two was a forgery all along, do you feel that it was unnecessary for you to sit through all those days of hearings in the Senate?

JUDGE McLAREN: I don't -- I -- Mr. Strawser, it's completely inexplicable to me. Based on my knowledge of the events, what I said before was that the memorandum is absolutely incredible. Now whether it's spurious, a forgery, or just name-dropping, I just don't have any

9. On July 23, 1971, the Republican National Committee selected San Diego as its selection site for the 1972 Republican National Convention. San Diego was the preferred site by William Timmons, who had investigated that city as a potential site and the Attorney General's convention task force, and was the highest regarded city for security purposes.

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9a Memorandum of May 6, 1971, from William E. Timmons to H. R. Haldeman.....	128
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THE WHITE HOUSE

WASHINGTON

CONFIDENTIAL/EYES ONLY

May 6, 1971

MEMORANDUM FOR:

H. R. HALDEMAN

FROM:

WILLIAM E. TIMMONS *BT.*

SUBJECT:

'72 Convention Site

I spent two days in San Diego this week surveying the city as a possible site for the 1972 Republican National Convention. A report on my findings is attached in Tab A.

There has been no effort in this paper to compare San Diego with other possible locations. Also, there is no evaluation given to California in relation to the possibility of Reagan or McCloskey contesting the nomination or weight given to Vice Presidential politics. Both of these factors must be considered at some point however in the decision process.

I believe San Diego would make an excellent location for the next Convention. However, there are two major obstacles and three minor problems:

TIMING: It is absolutely impossible for San Diego to host the Convention before Labor Day, September 4th. The city's hotel rooms are always committed during August by tourists and there is an unwillingness to lose regular customers. Also, the Hall is booked by the International Machinists Union September 3-17 and by the Fleet Reserves from September 17-21st. If these two organizations were willing to reschedule their conventions, even the early September date presents a legal difficulty for us. A number of states require Presidential candidates to file by late August in order to get on the November ballot. In 1968 I'm told the Democrats ran into this problem in several states but were able to get waivers. I am having two groups independently research the various state laws and possible waivers. Unless this is satisfactorily resolved, San Diego will not offer a bid. I'll keep you posted on the results of my investigation.

FINANCES: The RNC estimates it will spend \$800,000 to run the convention. Bidding cities are requested to pay the Committee this amount, part of which can be in services, rents, etc. It will be impossible for San Diego to raise this kind of money. They talk of only \$200,000, but if they are really in the running I feel the city can come up with

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FINANCES: (continued)

\$400,000 with the remainder coming from RNC and California GOP sources. If the timing problem can be resolved, I will make the necessary contacts to work on the financial bid.

HOUSING: The lack of excess first class rooms and available parlors present a minor problem. By stretching, San Diego can commit sufficient rooms for the event, I feel.

CONVENTION HALL: The RNC requires 150,000 square feet of work space in - or adjacent to - the Convention Hall. This is mostly for media. The San Diego Sports Arena has only about 30,000 square feet of off-floor work space. Therefore, a temporary building with approximately 120,000 square feet will have to be erected. This can be done.

GOP FACTIONS: If San Diego is chosen as the convention site, we can expect a blood-letting confrontation between the Finch and Reagan forces for control or at least public exposure. The battle lines are already forming, and I suspect the situation could become bitter. NOTE: Al Harutunian apparently has tentatively reserved the Sports Arena for mid-September under the name of Billy Graham. It is widely believed he is acting as an agent for Finch. I have information that Bob will be in San Diego this week-end and may discuss the convention. While I did not see Harutunian, he has learned of my trip and will undoubtedly spread it around. I suspect Dick Capen told him, although this is just a guess.

San Diego will definitely make a formal bid for the 72 convention. I am obligated to report to them if we can consider a September event. The Site Committee of the RNC will have to visit San Diego, but Bob Dole tells me he can arrange for a favorable report on any city the President wants.

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THE WHITE HOUSE
WASHINGTON

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June 23, 1971

MEMORANDUM FOR:

H.R. HALDEMAN

FROM:

GORDON STRACHAN G

SUBJECT:

1972 Convention Site

Magruder will meet the Attorney General today and discuss memorandum attached at Tab A concerning the RNC Site Committee's visit to San Diego.

To summarize:

1. The Site Committee found the same faults Bill Timmons' noted in his May 6 memorandum (limited office space at the convention hall and barely adequate hotel accomodations);
2. The local politicians are indifferent, but the State officials, especially Ed Reinecke, are enthusiastic.
3. The San Diego bid is \$500,000 in cash and \$1,000,000 in inflated price services. This excellent bid is considered primarily the work of Reinecke and Magruder will suggest that the Attorney General call Reinecke and thank him.
4. San Diego is the favored site of the Attorney General's task force, though Chicago, Miami, and Louisville are still under serious consideration by the Site Committee.
5. Dole, Timmons, and Magruder believe the Convention Site Committee's request to see the President should be denied. Rather, Timmons should see the President, get his decision, relay it to Dole, and have Dole program the Site Committee to recommend formally to the President and announce to the media the location of the 1972 RNC Convention.
6. A formal decision paper will be presented to you and the Attorney General when San Diego submits its formal bid, hopefully this week.

No -
I should

On a related matter, Timmons submitted the memorandum attached at Tab B concerning the number of White House Staff who would be attending the convention. Timmons believes all commissioned personnel (approximately 50) are "entitled to be present whether or not they are actively engaged in the Convention."

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The following are the options of which I recommend number two.

1. All commissioned personnel attend _____
2. Only those Staff who are contributing, whether commissioned or not _____
3. All male Staff down through Staff assistant level (150) _____

Wait a bit.

To Timmers
6/26

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT
WASHINGTON

SUITE 272
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D. C. 20006
12021 333-3320

June 22, 1971

CONFIDENTIAL

MEMORANDUM FOR: MR. JEB S. MAGRUDER
FROM: ROBERT C. ODLE, JR.
SUBJECT: 1972 CONVENTION SITE

The RNC's Convention Site Committee has now returned from San Diego, thus completing its series of visits to all the cities which have bid for the 1972 Republican National Convention. The Committee was not as impressed with San Diego as we hoped it would be, citing the lack of office space for the media and the RNC at the convention hall as the main drawback. Also, some political officials in the city, chief among them the mayor, either suggested that the city did not want the convention, or were at best indifferent to the prospect of getting it. On the other hand, business leaders and state officials, led by Lieutenant Governor Ed Reineke of California, were very enthusiastic and members of the Site Committee reacted favorably to these people.

Bill Timmons reports that his contacts in California tell him the city is now offering \$400,000 in cash and approximately \$600,000 in services bringing the total offer to approximately \$1,000,000. However, the city is putting very high pricetags on the services, so in reality the figure might be more like \$800,000. The final bid is being prepared this week in San Diego and should be received by the National Committee at the end of the week -- we will obtain a copy of it. It is our understanding that in this bid, the city will offer to construct a building adjacent to the convention hall which can house offices for the media and also for the RNC. San Diego will donate the use of the convention hall for as long a time as is needed to ready it for the convention, and also for the convention sessions.

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Incidentally, San Diego Democrats are reported to be upset that the city did not bid for the Democratic convention and therefore San Diego has decided to put in a pro forma bid for the Democratic convention.

It also should be noted that the Site Committee believes the list of cities under serious contention is now down to San Diego, Miami, Louisville, and Chicago. The committee has ruled out Houston because it has not expressed a real interest in the convention and has refused to make a firm offer of cash and services. San Francisco was ruled out because the committee fears possible problems with the nearby campuses and does not feel the convention hall and hotel situation is as good as it is in other cities.

In the meeting of our convention strategy task force on Friday, San Diego emerged as the very clear favorite, followed by Houston. There was no support for any of the other cities. Those attending that meeting were Pat Buchanan, Bill Safire, Dick Moore, Harry Dent, Len Garment, Don Rumsfeld, and Bill Timmons. Dwight Chapin, Fred La Rue, and Frank Shakespeare were out of town. In addition to favoring San Diego, the task force agreed that the convention should begin the week of August 21, 1972, and should be a three day convention.

Jo Good told me today that members of the Convention Site Committee are in Washington this week and that she would like Chairman Dole, Fred Scribner, and the vice-chairman of the committee to meet with the President later this week or next week to review with him the thoughts of the Site Committee, so that the President might be informed of everyone's views before making up his mind. I have advised Bill Timmons and Gordon Strachan of this; and the three of us have agreed that the following strategy should be employed rather than having the committee see the President. Also, Timmons tells me that Dole agrees with him that we should pursue the following scenario:

As soon as the bid from San Diego comes in, we (Timmons, Magruder, Odle) will examine it. If our inclination is still to go with San Diego, I will prepare a decision paper for the Attorney General and Mr. Haldeman. Assuming their concurrence, we will then request that Timmons discuss with the President his views on all the cities in contention for the convention site and our recommendation that we go to San Diego. Assuming the President concurs with this choice, Timmons would then talk with Dole and communicate the President's decision to him. Dole would talk with the members of the Site Committee regarding this and at some future point in time (next

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week or the week after), either Dole by himself or Dole with the other members of the Site Committee would meet with the President and announce to him their decision that the convention go to San Diego. The President would tell the Site Committee that he concurs with their recommendation that the convention be held there. Members of the Site Committee could then go into the Briefing Room and announce to the media that they had recommended to the President that the convention be held in San Diego, that the President had approved their recommendation, and that they hoped the Republican National Committee would approve the recommendation in Denver on July 23. This would put us publicly on record as having chosen a convention site before the Democrats.

If the general strategy as outlined above is approved, we will proceed as suggested with the initial decision paper.

Approve _____ Disapprove _____

Comments _____

✓ bcc: Mr. Gordon C. Strachan (for Mr. Haldeman's approval and concurrence if necessary)

CONFIDENTIAL

THE WHITE HOUSE

WASHINGTON

June 21, 1971

MEMORANDUM FOR: H. R. HALDEMAN
FROM: WILLIAM E. TIMMONS *BT*
SUBJECT: '72 Convention

In preparing my preliminary plan for next year's convention, I need to know how many White House staff we may be required to accommodate with rooms, transportation, tickets, etc.

No doubt a number of key staffers will be involved in the convention campaign and, of course, those will be included in our early plans.

I personally feel that all commissioned personnel are entitled to be present whether or not they are actively engaged in the convention. ~~or not~~. This would be a morale booster, give staff a greater insight into politics, and serve as "crowd fillers" for selected events.

RECOMMENDATION:

That I include plans for having all commissioned White House staff attend the '72 Convention.

APPROVE _____ DISAPPROVE _____

OPTIONS:

If the recommendation is disapproved, then

1. Only those staff who can make a contribution to the Convention _____

If the recommendation is approved, then

1. Include male staff down through staff assistant level _____

CONFIDENTIAL/EYES ONLY

June 26, 1971

MEMORANDUM FOR: THE ATTORNEY GENERAL
H. R. HALDEMAN

FROM: JEB MAGRUDER
WILLIAM TIMMONS *BT.*

SUBJECT: 1972 Convention

This paper with its attachments is a summary of information relating to decisions that should be made immediately regarding the 1972 Republican National Convention. We make three recommendations:

1. That San Diego be selected as the site city
2. That the Convention start August 21, 1972
3. That it be a three-day Convention

We suggest you discuss these topics, at the earliest opportunity, with the President to get his guidance. When resolved, Chairman Bob Dole should be notified so he can engineer his Site Committee to make identical recommendations to the President. Later, Dole should meet with the President to advise him of the Committee's views, giving the President an opportunity to concur. Should San Diego be selected, this meeting might be considered for San Clemente the first week in July.

I. DEMOCRATS

Every available signal is that the opposition will hold its national convention in Miami Beach, starting on July 10, 1972. While Miami has good facilities, hotels and vacation atmosphere, the Democrats are probably more interested in the security aspects of Miami as a result of the '68 riots in Chicago.

II. REPUBLICANS

Bob Dole is Chairman of the Republican National Committee Site Selection Committee. The Committee membership is listed in Tab A. Bids have been received from:

CONFIDENTIAL/EYES ONLY

CONFIDENTIAL/EYES ONLY

-2-

-- San Diego
-- Miami Beach
-- Chicago
-- Houston
-- Louisville
-- San Francisco

Committee visitations have been made to all cities except San Francisco. An analysis of each city's bid and some pro and con arguments of the various sites are in Tab B.

Since the President will control the Convention machinery and can schedule events to fit television prime time, media coverage is not a significant factor in site location. Presumably we will try to target time for maximum exposure, and this can be done by a little earlier program on the West Coast or a little later on the East Coast.

Also, while we question the argument that site location helps deliver a state's electoral votes to the Party, it certainly is a false issue for regular convention cities such as Chicago, Miami and San Francisco.

Facilities, security, a healthy "upbeat" atmosphere, confidence and control are important considerations to site location.

The Site Committee will make its formal recommendation to the full Republican National Committee at the Denver meeting on July 23. It is expected that the RNC will ratify the recommendation without difficulty. Additionally, Dole has indicated he recognizes that the President will call the shots on the Convention.

III. DATE OF CONVENTION

The Republican National Committee, Justice Department and White House counsel agree that a September convention would be too late to guarantee that the nominees can legally be placed on the ballots in a number of states. While some waivers may be possible, a September Convention cannot be considered. The Summer Olympics start in Munich, Germany the last week in August, and ABC has exclusive coverage and a commitment to carry events in prime time. ABC officials say that is locked in and it would be difficult for their crews and equipment to cover a convention the last week in August. Also, it is felt we would lose a substantial audience if the Convention were to compete with the Olympics. Therefore, August 21 appears to be the latest date the Convention could start considering the circumstances. The RNC favors the Convention for this period.

CONFIDENTIAL/EYES ONLY

IV. THREE-DAY CONVENTION

Historically, both parties have held conventions varying in length from two days to five days. A four day convention has been the most popular. Because of the expected renomination of the President, a shorter Convention is felt appropriate for 1972. This would help eliminate delegate and public boredom and leave fewer opportunities for the media to emphasize Republican differences, demonstrators, etc. On the other hand, official business can hardly be condensed to fewer than three days. It is anticipated the sessions might be divided as follows:

Monday, August 21	Convening
Morning	Committees appointed
First Session	Temporary Chairman
Monday, August 21	Keynote Address
Evening	Permanent Chairman
Second Session	
Tuesday, August 22	Reports of Platform
Morning	Rules, Credentials, etc.
Third Session	
Tuesday, August 22	Nomination Speeches
Evening	and election of candidates
Fourth Session	
Wednesday, August 23	Acceptance Speeches
Evening	
Fifth Session	

The principal change in this agenda schedule is that normally the committee reports, including Platform, are held during evening prime time on the second day. With an incumbent Administration, it is felt this event could be held in the morning even though we are exploring ways (films?) to make the platform more interesting and attractive. The RNC favors a four day convention because of anticipated hotel commitments to the host city and fear emergencies may require longer individual sessions.

We urge adoption of our recommendations.

1. San Diego as site

APPROVE _____

DISAPPROVE _____

2. Start August 21, 1972

APPROVE _____

DISAPPROVE _____

3. Three-Day Convention

APPROVE _____

DISAPPROVE _____

CONFIDENTIAL/EYES ONLY

SAN DIEGO

AVAILABILITY: August date is okay.

HALL: Seats 15,000. Will require temporary facility for network and service organizations.

BID: \$1,500,000 in cash, goods & services.

HOTELS: Can meet 18,000 requirement, some rooms better than others. Short on parlors.

SECURITY: Good local police force and state patrol. Military installations close by. Access to hall is good.

ARGUMENTS:

PRO: -- Republican Governor (Reagan)
-- Republican Congressman (Wilson)
-- Close to Western White House
-- Outstanding climate
-- New, non-convention city
-- Emphasizes GOP interest in Western votes
-- Best money bid
-- California has most delegates and most electoral votes
-- Many things for delegates to do
-- Outside, wholesome atmosphere
-- Copley papers

CON: -- Democratic Mayor (up for re-election this year)
-- City never handled big riots
-- Shortage of parlors
-- Construction of temporary facility next to hall
-- Possibility of Reagan candidacy
-- Internal competition between Reagan and Finch forces
-- Proximity to Watts & Berkeley could assure demonstrations
-- Arnhold Smith IRS problems
-- Must have earlier sessions to accommodate national prime time
-- Aerospace unemployment
-- Considered a non-union town

CONCLUSION: By far the best of bidding cities.
Security is main concern.

MIAMI BEACH

AVAILABILITY: August date is okay

HALL: Seats 16,000. Excellent hall.

BID: In neighborhood of \$600,000 in cash, goods and services.

HOTELS: Good rooms and parlors in sufficient numbers. However, they are stretched out with only one artery.

SECURITY: Excellent because of geography.

ARGUMENTS:

PRO: -- Close to Key Biscayne
-- Sentimental return to '68 site
-- Lot for delegates to do; beaches
-- Best security of all cities
-- Easier for media to cover both conventions

CON: -- Hurricane season
-- Old hat; nothing new
-- Public boredom of having two conventions in same city
-- Democratic Governor and Mayor
-- Afraid of riots; seek shelter
-- Not truly a "southern" city
-- Local Cuban competition
-- Have had racial problems
-- Must have later sessions to accommodate national prime time

CONCLUSION: Second best choice

CHICAGO

AVAILABILITY: August date would require moving American Legion convention. This may be possible.

HALL: 12,000 seats -- a little small. In black ghetto section.

BID: The required \$800,000 anyway we want it.

HOTELS: Excellent number of rooms and parlors.

SECURITY: Police good and have riot experience.

ARGUMENTS:

PRO: -- Republican Governor (Ogilvie)
-- Midwest location
-- Transportation center
-- GOP can do what Democrats couldn't.
-- Good prime time coverage for nation
-- Big City atmosphere

CON: -- Red flag to demonstrators
-- In Daley's hands
-- Have been there before
-- Governor Ogilvie is opposed
-- Chicago is not truly representative of Heartland America
-- Not much new for delegates
-- Racial and unemployment problems
-- Hot, humid climate

CONCLUSION: The risk is too great for any marginal benefit.

HOUSTON

AVAILABILITY: Possible in August subject to rescheduling of baseball games.

HALL: Astrodome is too large but Astrohalla has 15,000 seats. Modern facilities.

BID: No firm offer made.

HOTELS: Limited. Must utilize rooms far away from hall.

SECURITY: Probably adequate.

ARGUMENTS:

PRO: -- A new convention site
-- Will influence Texas and southern votes
-- Republican Senator (Tower) and one local Congressman (Archer).
-- Midwest television time
-- Central geographical location
-- Few demonstration problems

CON: -- Democratic Governor
-- LBJ image covers Texas
-- Hot and humid climate
-- Not much for delegates to do
-- It was apparent to the Site Committee that Houston was not genuinely interested in attracting the convention and refused to cooperate. If Houston is chosen, it will require a great deal of RNC staff work to get a decent bid.

CONCLUSION: "Dark Horse" third choice but harder negotiations required.

LOUISVILLE

AVAILABILITY: Anytime we want it.

HALL: New, excellent downtown facility.

BID: Open to negotiation; no firm offer.

HOTELS: Extremely limited; probably have to house in other states.

SECURITY: Probably adequate but untested.

ARGUMENTS:

PRO: -- New convention city
-- Helps with southern and border states votes
-- Republican Governor (election this year) and two Senators (Cook & Cooper)
-- Small town heartland America
-- Kentucky bourbon

CON: -- Housing and transportation limited
-- "Why Louisville?"
-- Nothing for delegates
-- The Site Committee feels Louisville is not sincere in its bid, which was instigated by Col. Sanders of chicken fame and a group of aggressive Jaycees who are part of the Democratic Mayors best supporters.

CONCLUSION: Not enough pluses to offset liabilities.

SAN FRANCISCO

AVAILABILITY: Undetermined

HALL: Cow Palace seats 14,000 but is far from city

BID: No offer made. Felt could raise \$300,000.

HOTELS: Tourist season. Hard to commit.

SECURITY: Not Good. Center of dissent and unrest.

ARGUMENTS: No body considers San Francisco a possibility in light of above and other factors.

CONCLUSION: Absolutely out of question!

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

WASHINGTON, D.C. 20530

OFFICE OF THE ADMINISTRATION

June 30, 1971

MEMORANDUM FOR: Mr. William Timmons
Office of Congressional Liaison

SUBJECT: Security and Civil Disorder Capability of the
Six Cities Bidding for the Republican National
Convention

After a review of the security and civil disorder capability of the six cities which have submitted bids for the holding of the Republic National Convention, we herewith submit our conclusions. A detailed breakdown of the capability of each city in those areas which we consider most important is attached. The cities were evaluated on the basis of these criteria. The six cities, together with our summary observations, are listed in order of preference as follows:

1. San Diego, California

Command and control elements of the city for civil disorders is considered excellent. Recent incidents in the nature of civil disorders indicate that the police department is well organized and well deployed. Arrangements exist for curfews and the imposition of restrictions such as the closing of bars and gasoline stations. The city has developed excellent mass arrest procedures. San Diego has approximately 950 uniformed sworn personnel and approximately 260 reserves. The city has achieved an excellent level of training in riot control and has engaged in some joint command post exercises for civil disturbances. The police department has two SEADOC attendees. Their intelligence system is excellent.

The city has a very small EOC, but is capable of expansion with considerable reorganization. It has no mobile command posts. The existing master civil disorder plan is considered excellent and is tested each year. They have excellent special organizational arrangements for large scale security and large scale civil disorders situations. They have sniper suppression teams, but only limited capability in explosive clearance and arson suppression. The city relies on the active military service for ordinance disposal.

Mobile booking teams are available and mass arrests procedures have been developed. They have special protective equipment such as flack vests and face shields but would need supplemental equipment in the case of a large civil disturbance. A limited communications ability exists.

Mutual aid arrangements are in existence with local cities (approximately 500); regional areas (approximately 2,000); and state police (approximately 2,500). On street national guard strength can be anticipated at 15,000. The state of training of these forces can be considered good at the county and regional level, and excellent at the state level.

There is excellent ingress and egress to the municipal convention center which is located in the center of town and across the street from the county jail. The San Diego Sports Arena is located approximately five miles west of the city in a semi-industrial area. There are no parks or other open areas in the immediate vicinity. Heliport facility could be arranged. Adequate parking facilities do exist.

Relationship between the judiciary and the police is excellent.

3

2. Chicago, Illinois

This city has a good police command and control element which has operated successfully in the past. The number of uniformed police is adequate for most anticipated situations. They are well trained in CD operations. Their intelligence system is excellent.

The city has an expandable well-equipped EOC. They have a present capability in the area of Special Operations to include ordinance disposal, sniper and arson suppression, mobile booking, mass arrest and detention. Police force is well equipped with protective gear and chemicals. Good communications equipment is available with trained operators.

The major facilities afford adequate ingress and egress. Heliport facilities can be arranged in the immediate location, and adequate security can be provided.

Excellent relations exist between police and judiciary.

Police superintendent is not a political activist.

3. Houston, Texas

There are established policies and procedures for the control of civil disorders in Houston. The city has approximately 1,800 uniformed sworn police officers. They are considered to have an operational capability in controlling riots.

4

They have an excellent master civil disorder plan. Existing mutual aid arrangements with surrounding counties can provide 50 sheriffs and 500 reserves as well as a state highway patrol of 700 equipped officers and approximately 11,000 on street national guard forces.

The top leadership of the police department is considered to be excellent.

4. Miami Beach, Florida

Command and control element of the Miami Beach Police Department is considered to be good. The police department has performed in minor civil disturbances in an adequate manner. They have made local curfew arrangements and have a capability for mass arrests. The number of uniformed sworn policemen is 231. All members of the police department have had some special riot control training, but none have attended SEADOC.

The city has an excellent master riot control plan and an excellent working relationship with the fire services and public utilities. They have a capability for special operations in the area of ordinance disposal, sniper suppression teams, and mobile booking teams. They have a regional mutual aid arrangement providing 60 sheriffs, 285 policemen. The highway patrol augmentation capability is 872 uniformed personnel. The National Guard could provide an on street strength of 4,800. The police have a good working relationship with the judicial establishment. The competence of the top leadership of the department is considered good.

5. Louisville, Kentucky

This city has good command and control for civil disorders. There are 563 uniformed sworn policemen. The general status of riot control training among uniformed personnel is considered good. However, none of the police department has had any SEADOC training. Louisville has an excellent master riot control and civil disorder plan. The police have an explosive ordinance disposal team and sniper suppression teams as well as a mobile booking team. The force is equipped with protective helmets and gas masks and has some chemical ordinance.

There are 638 state police available to the city in an emergency and an on street national guard capability of 3,000 men. The police have a good relationship with the judicial establishment, and the top leadership of the police department is considered good.

6. San Francisco, California

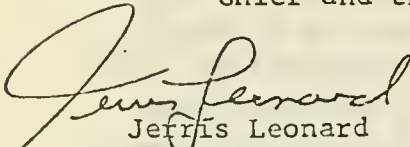
The command and control element for civil disorders in this city is considered to be excellent. Recent experiences in civil disorders in San Francisco over the past few months show that the police department is well organized and well prepared. There are curfew arrangements and authority to impose restrictions such as the closing of liquor stores and gasoline stations. City has provided for mass arrests. The number of uniformed police personnel is 1,761 with a reserve force of 240. The status of riot control training for the uniform police officers is considered to be excellent. They have had two SEADOC attendees. The city is

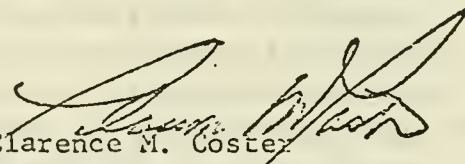
considered to have a good intelligence gathering network.

San Francisco has an adequate emergency operation center and several mobile field command posts. EOC is capable of expansion. Police department has sniper suppression teams with limited capability in the area of arson suppression and explosive clearance. Mobile booking teams are available. The police have special protective equipment and some chemical ordinance. Police department has a very limited communications capability. Mutual aid arrangements are in effect with local cities, counties, and regional areas and the state police. They are capable of supplementing the police force by 1,500 (local cities); 500 counties; 1,000 (regional area); and 1,500 (state). The national guard has the capability of putting 15,000 men on the street. The police department has responded well in recent civil disorders.

The relationship between the police and the judicial establishment is excellent.

The command structure of this police department has been subject of criticism in recent years, because it is not considered to be responsive to the Chief of Police. The Chief was appointed approximately one year ago by Mayor Alliotto, replacing the past Chief, T. Cahill, due to Cahill allegedly being too law and order oriented and conflicts arising between the Chief and the Mayor.


 Jeffris Leonard
 Concur--Administrator


 Clarence M. Coster
 Associate Administrator

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
March 4, 1971

MEMORANDUM FOR JOHN D. EHRLICHMAN

Subject: Security Preparations for the 1972 Convention

As you know, the 1968 Democratic convention was the scene of considerable controversy and violence, giving rise to security problems of major proportions. The Republican convention in Miami Beach was relatively free of such disturbances, but the fact that the Republicans now constitute the party in power in addition to the involvement of the President increases the importance of security at the 1972 convention site.

Early planning in regard to the Federal role is already underway in the Secret Service. However, a comprehensive effort involving coordinated Federal and local enforcement efforts cannot be mounted until the site is known. If the convention site is identified at an early date, the local law enforcement agencies can start the necessary preparations, and their efforts can be supplemented by possible funding through an LEAA grant. Law enforcement officials from potential convention sites have already visited LEAA requesting consideration of supplemental grants. However, both LEAA and OMB agree that such a step cannot be considered until the particular site is selected.

Taking into account security alone, it is desirable to have the site selected as early as possible. I recognize that other considerations are relevant and may be determinant, but I thought that it would be desirable to bring this matter to your attention early in the game.

15/ A.R.W.

Arnold R. Weber
Associate Director

10. In response to a question at the Senate Select Committee, concerning Dita Beard's disappearance on the eve of the Kleindienst hearings, E. Howard Hunt stated that he was not aware of any role Gordon Liddy played in Mrs. Dita Beard's departure from Washington.

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10a E. Howard Hunt Testimony, 6 SSC 3791.....	154

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Third, when the attaché case of Mr. McCord was opened for my view at the time of discovery, I noticed that the group of surgical gloves, which I had last seen in the attaché case when it was in my safe at the White House, that those gloves were missing from the attaché case and were not otherwise enumerated in the inventory subsequently provided by the FBI.

And, of course, there may have been many other things. I did not maintain an index of the contents of my safe.

Senator INOUE. And my final question, Mr. Hunt: In response to one of my questions, you said that you went to Denver, Colo., somewhere to meet with Mrs. Dita Beard to determine, first, her reasons for leaving Washington. Weren't you aware at that time that Mr. G. Gordon Liddy had escorted Mrs. Dita Beard out of Washington?

Mr. HUNT. I was not aware then, and I am not to this day aware that such took place, Senator.

Senator INOUE. Did Mrs. Beard tell you how she got out of Washington?

Mr. HUNT. She did not.

Senator INOUE. Did she tell you why she left Washington?

Mr. HUNT. She alluded to it in response to my question.

Senator INOUE. What was her response, sir?

Mr. HUNT. She said in effect, and again let me stress that she seemed to be under sedation and was from time to time in need of oxygen, she put it that there was nobody she could trust, that she felt the only thing she could do was to run away from what she interpreted to be a hostile environment. I don't know if any memorandum stated it in those terms.

Mr. Lenzner, do you have a copy of that memo?

Mr. LENZNER. Of the memo on Dita Beard?

Mr. HUNT. My eight-page memo. Did I see you referring to it?

Mr. LENZNER. No; this isn't it. If you are referring to the memo on Dita Beard, we have made a request to Mr. Cox's office for that. We have not received it.

Mr. HUNT. Again I hate to go into details of an incident that took place a long time ago when there is hard evidence, a document that I myself wrote just hours after I returned from Denver.

Senator INOUE. In questioning Mrs. Beard, you indicated that you met with her from 11 o'clock to about 3:30 in the morning.

Mr. HUNT. A rough estimate, sir.

Senator INOUE. How did you convince the doctor that it was important for you to meet Mrs. Beard?

Mr. HUNT. I believe those representations had been made before I embarked on my trip by her daughter.

Senator INOUE. Thank you very much, sir.

Thank you, Mr. Chairman.

Senator ERVIN. Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

Mr. Hunt and Mr. Chairman, I apologize for being absent during much of the afternoon but as I indicated to the chairman earlier, the

11. On June 22, 1974, The New York Times, page 15, carried a story in which Rep. Bob Wilson (R-Calif.) said the Special Prosecutor informed him that no legal action was being considered against him in relation to the ITT matter.

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11a <u>New York Times</u> article, dated June 20, and carried in its June 22, newspaper.....	156

NEW YORK TIMES, June 22, 1974

Bob Wilson Says Jaworski Plans No Move Against Him

SAN DIEGO, Calif., June 20 (AP) — The Watergate special prosecutor, Leon Jaworski, has assured Representative Bob Wilson, Republican of California, that "no grand jury or court action" is being considered against him in the I.T.T. investigation. Mr. Wilson said Thursday.

He said that he had asked for the advisory because "stories were spread that I was going to be indicted."

Mr. Wilson helped to raise financial support for the 1972 Republican National Convention, which was first set for San Diego and then moved to Miami Beach. He obtained a pledge of aid from Harold Geneen, the president of the International Telephone and Telegraph Corporation. The case involves an investigation to determine whether John N. Mitchell knew, when he was Attorney General about the I.T.T. pledge before entering into an antitrust settlement with the conglomerate.

12. On April 4, 1972, the President met with H. R. Haldeman and Attorney General Mitchell in the Oval Office from 4:13 p.m. to 4:50 p.m. during which time the ITT matter was mentioned.

Page

12a Transcription of recorded conversation of above-described meeting; 1, 4-6, 8, 10, 15. (A transcription was previously furnished to the House Judiciary Committee). . 158

The President/Attorney General Mitchell
and H. R. Haldeman
Oval Office
April 4, 1972 - 4:13 - 4:50 PM
(Expletives Deleted)

P Well John, I hope you had some time off -- that they didn't
bother you to death with ITT and all that

M No. It was simply wonderful.

P Good (unintelligible).

M We always enjoy it, Mr. President. Oh, Bebe turned that
thing up according to your formula and

H (Laughter).

M I tell you, it was just great.

P I told these people around here, I said (unintelligible) call
Mitchell, I said don't you Bob, and.
Of course, I suppose they had to (unintelligible) one or two.

M Well some of them did.

H We didn't bother you too much?

M No, not you fellows.

P I said in the campaign -- I said to hell with the damn
campaign. Did you do any golfing? No?

M Hell, I didn't even care to.

P Did you fish?

M We fished, and we went out in the boat with Bebe a couple of
times and had dinner with him two or three times.

-2-

P I'd like a little consomme. Want some consomme?

M I'd love some. So it was just absolutely great. We had some of the people down from the Committee where we could spend a couple of days, you know, with quiet and so

P Yeah (unintelligible) sort of busy these days. Try and get the weather, damn it, if any of you know any prayers, say them (unintelligible) weather. Let's get that weather cleared up. The bastards have never been bombed like they're going to be bombed this time, but you've got to have weather.

M Is the weather still bad?

P Huh! It isn't bad. The Air Force isn't worth a I mean, they won't fly. Oh, they fly, but they won't -- you see our Air Force is not . . .

H It's the strangest thing -- in World War II they flew those bombing runs all the time and they couldn't see a thing.

P I know.

M But they were doing a different type of bombing then.

P Strategic bombing and all that -- nevertheless it's a miserable business.

M Are the Navy pilots as bad?

-3-

P Oh they're better, but they're all under this one command. It's all screwed up. We just aren't going to talk about it. The weather will clear up. It's bound to. When they do, they'll hit something -- and, they're a lot of brave guys -- you've got to say. After all that POW (unintelligible) that poor who got shot down. They're over there starving on that damned rice. It's all right, we'll give 'em hell. Well the ah, what are your reflections on the present thing. Why don't we start with what I told the staff to get the hell off of the ITT and then get on to politics which is more interesting, not that that isn't --

M But that's politics -- pure and simple politics, but hopefully we'll get this thing.

P Well, I don't know if we'll ever get out of it -- I mean -- I think what we have to face is that it will be investigated by (unintelligible) election as you get closer to the election of course it's extremely, I think that -- I think you might adopt the practice -- I think you might consider adopting the practice that after the Democratic Convention the Republicans will boycott all investigating committees on the grounds that they are politically motivated. How would that be?

-4-

M I would think I would go beyond investigative committees.

I'd go to some of the others where you have a facade .

P Harassing.

M Of substance, but

H (Unintelligible). It's a good idea.

P Yeah -- we're going to boycott anything that we think is politically motivated.

H These people are disgracing (unintelligible).

P And ah, Republicans just walk off and say it's just politically motivated. Well, at least ITT got 'em confused.

M I would say it's quite confusing. Some of the more enlightened newspaper people are beginning to write to the effect that the Democrats got to come up with something more than they've come up with or the monkey's going to be on their back.

H Manolo, who do you think (unintelligible).

MS I don't think so, sir.

M Not much Manolo.

MS What they do is (unintelligible).

M You happen to be right, Manolo. I was just telling --

(Material unrelated to Presidential actions deleted)

-5-

M You know this little girl -- this Lichtman -- the secretary?
You know where she had her press conference don't you -- did
you notice that? Down in the law office of the Democrat
Chairman for the District --

P She's a Democrat?

M Yeah, but the press conference was held in the law office of
this (unintelligible) District. Democrat Chairman, and yet
there wasn't anything in the newspapers about it or why it
just so happened.

HorP (Unintelligible).

M Most of the 'shakers' are, that's for sure.

P What is your view about the convention -- about all the scares
and cries I hear about the 250,000 naked kids that are going
to be coming?

M Well, Bob and I have just gone over this and I've had a meeting
this morning with

P Kleindienst told us about it.

-6-

[M And so forth, ah, it seems to me there are three factors -- number one was screaming kids -- if you call them kids; number two -- the ITT Sheraton business with the television on the hotel all through the Convention; and thirdly, and equally, if not more important, is the fact that the site selection committee and the people that went out there to look at that thing did a God damned poor job. Its come to the point where it's going to cost between 2.4 and 2.5 million to put that thing together. In addition to that, there's

H That's if we just get the convention hall apparently?

M No, no, this is the whole thing, this is the whole thing.

H I see, all the hotels and stuff involved.

M Yeah everything; in addition to that there has to be nine hundred odd thousand dollars of insulation in that arena out there, and in addition to that there's a

P Who, (unintelligible) this, Wilson (unintelligible).

M No, I think a lot of our people closer to us than that were at fault in not recognizing the limitations of these facilities.

P All right.

M In addition to that you have your building trades labor contract coming up on June 1, out there for negotiations, and they can put the pressure on your pay board or the rest of it. So, in view of that we have thought of the potential of changing the site.
[We can get out of there --

-7-

P What ground would you use for changing it?

M The cost and the uncertainty of the availability of the facilities.

H There's a real question as to whether they can do the construction on --

M That's correct, and the arena out there is owned by two Canadians, and they're just acting tougher than hell.

P All Canadians are tough.

M And, there's no contract with them that covers some of these things; -- ah, so that you're not walking away from the City of San Diego, you're walking away

H You can make a very good case.

P How about San Diegians -- how do they feel?

M I don't know, frankly, I believe it would be mixed emotions.

H It's mixed, but with all the talk of the demonstrators

P Lot of people don't want them there

H I think a lot of San Diegians would be very happy to have them go away.

M I would think that that would be the case.

(Overlapping conversation)

H Hotels anyway --

-8-

P (Unintelligible) you build the fact that the arena is in trouble, in other words, you've got to find the cause. This subject came up before, you know, you raised it, Bob, and said, well, our people are so stupid on public relations that I'm sure the way it would come out is we went because we didn't want to stay at the Sheraton where somebody I understand agreed I was to stay.

H No.

P I'm not even going to stay any place in San Diego -- I'm staying in San Clemente, but be that as it may that was apparently some story that they had. Well anyway, whatever it was, the question is whether or not at this point we could start the talk. It's awful hot incidentally, terribly hot.

H I can see that

M Well, we've started this

P Put it on the basis that the arena can't be finished. Can we do that?

M Yes, as a matter of fact, I was going to say we're starting this, programming this, by sending people out to continue, and I say continue the negotiations with these Canadians because they don't want to give us a place for lead time in order to get in there to do the improvements, etc., etc.

-9-

H Then we could start the cost thing and then
(Overlapping conversation).

P I'd just say that the arena would not be finished.

M Well, the cost factor goes in with the negotiations because if
you don't get into the arena to do the reconstruction by a certain
date your cost factors multiply and multiply and multiply --
so you just (unintelligible) the same factor. In the meantime,
I talked to Bebe this morning and a Miami Beach of course is
the logical place.

P Sure.

H (Unintelligible).

P Well, if it's all set up -- safe -- television -- that's the major
consideration. At least it's all there. Go to the stupid damned
place again, and I got a place to stay this time I wouldn't have
to stay in a hotel.

M So Bebe has got this fellow Myers.

P Hank Myers.

M Hank Myers, who has the contacts and so forth, quietly can-
vassing to see if the arena and the hotel rooms will be available.

H This time of year?

M Oh hell, they run a lot of conventions.

-10-

P They run a lot of conventions but they'll clear them out by that time. It isn't really, I've been there in June and August -- we all have -- and they do run conventions, but generally speaking, it's still more open in the summer and the rates are lower.

M Of course

H It's still ridiculous though.

M So, if the only negative factors that I see in the change

P Is the admission of guilt in ITT, right?

M Well, I think that that will go by the boards.

P Maybe that's better than just having the damned story rehashed again.

M I would rather have the -- if they can sell it as an admission of guilt now than I would have the television cameras on the Sheraton Hotel all through the Convention.

P That's right. That's right.

M I don't know

P My theory is - It's the old story you know that a good poker player -- cut your losses -- get out of the bad box and get out of it fast.

M I don't know how our friend the Governor would take this. He might be damned glad to get the problems out of the way. I don't know, but we would do --

-11-

P Can't we -- could we have a situation where we have a break with the Canadians. You see what I mean? Create a conflict with them.

M That's what we're

P And then go out and announce it, but it's got -- if for once we could do the PR right -- if for once -- just one single solitary time -- and keep it out of Bob Wilson's hands -- and do it right -- but the problem is that the convention (unintelligible) that is the arena won't be ready, the cost is too great, or . . .

M That's the way we would program it.

P Think it would work?

H Sure. I think it would. You're bound to get some bumps on the other side? So what? You got a base a story -- just stick with it -- couldn't get the arena done -- made a mistake in surveying it. It's all fallen apart.

P You've got to establish that immediately though. This is April, and the Convention is only five months away, and so everybody is going, as you know, now that's going to be ready --

M You see these negotiations are going on and what we were proposing to do is to send a big architect and a builder or somebody else up to have a confrontation with the Canadians in Vancouver.

-12-

P Well let's do it.

M Well, we want to make sure we can go to Florida before we break this pick.

H I'd just soon not have a convention, but we can't get away with it.

M Have an absentee ballot -- that's what I'd prefer.

H The Ripon Society is suing us for improper selection of delegates or something.

P (Unintelligible).

H We have something where you state that (unintelligible) to the President gets eight additional delegates or something and the Ripon people have gone to court and some judge has upheld them on the first round.

P Is that right? Well that's been done -- been done from the beginning -- I don't know whether it means anything.

H I don't think it does. They don't seem to worry about that anymore.

M The fact of the matter is that there are a few rules that a political party has control of it's Convention and in the past they have ignored even the state laws that require people to be pledged for so many ballots and so forth. They've just ignored them.

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P Let me ask you this. Do you think the possibilities of major demonstrations are less in Florida? It doesn't make a hell of a lot of difference anyway. I'd rather have a demonstration in Florida than I would in California anyway. California is a state we have to go for for other reasons.

H Well, I think they are infinitely less.

M Infinitely less.

H You've got much better physical (unintelligible).

M And in addition to that you have all the Democrats in control in Florida from the Governor on down -- where in California you have all the Republicans in control.

H (Unintelligible) have demonstrations (unintelligible).

P One story John, whenever you're asked about a (unintelligible). You know, I'm the only one in the whole outfit that didn't want to go to California. I was against it all the time.

M You wanted to go to Chicago. I didn't want you to.

P I did. That's right, but I (unintelligible).

M No question about it.

P How about Chicago now?

M Daley wouldn't let you in there, I bet.

P Oh

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H Can't start from scratch from anyway now, I don't think.

You've got

M Be very very difficult.

H It would.

M And we have a month between the Conventions -- more than a month in which

H Clean things up

M To change things enough to make it look like -- assuming that (unintelligible)

P (Unintelligible) platform in.

M The facilities for crowd control are so much better in Miami Beach there.

H And of course the cost is

M And we save money LEAA money, we don't have to

H Save police money.

P The other point is the Democrats really fouled up, and the police and the rest will feel that they have a responsibility to be a little bit more restrained when we're there. Well, I hope you can do it. My idea is -- I'd wait. Obviously we have to get ready -- when it's ready -- I'd say in about 30 days from now.

M I think we could move in on it before then

H Faster

M Because we're at the point where

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P (Unintelligible) no way you could do it though without being charged because of ITT

M Well Herman came out with a statement today which shows that ITT's contribution is down to \$25,000. I just think that the cost of it, the labor problem, the possibility that you'll never get that place in shape

P Yeah

M Ah, added on top --

P Also, we don't -- there's very little that we could do to screw up Florida as a state that we might win. California is a toss up anyway you figure it. It's a to carry and there's a nasty incident that could hurt us.

M Yep.

P That's the point. On the other hand, I don't think Reagan's attitude is supportive. He wants to carry the state. On the other hand, you got to figure whether or not -- these clowns that want to go there say -- oh it would help so much -- and all that business.

H (Unintelligible).

M Well -- you've a double edged sword there -- if everything went off nice and peaceful and you had all those 10,000 college kids we were going to have out there marching with their banners and everything was beautiful -- that'd be great.

P Yeah.

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M But if you have one of these confrontations with a Republican Governor and a Republican Mayor and Pete Pitchess is sending in his storm-troopers -- why

P Yep.

M Well that's where the police are going to come from, you know they don't have enough in San Diego to handle it.

P (Unintelligible) send Pete Pitchess down - Sheriff's posse. Those old farts riding their horses. Well, I like it, but I would say that if you just start getting the word out awful fast about the (unintelligible) problem you are having with the Canadians. Is that being done, I haven't seen anything?

M Well, it's all local out there. It's known locally.

P The main point is to get it out nationally. Well.

H Local too.

P Who would say that? -- the Mayor would say it or the Convention Committee -- that we regret that we cannot handle it -- that we cannot have the hall ready.

M Well this is the Republican Convention and they wouldn't be saying it because they would, of course, have to bring that site selection committee back and they'd have to put out another call and things like that; so it would be the Republican National Committee that's the party of interest.

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P Ok. -- Well leaving that subject -- what else is -- I guess today is Wisconsin isn't it?

M It certainly is -- ought to be an interesting go -- ah -- I told those fellows over there tonight with Dale and -- Dole and so forth -- to get out two thoughts in connection with this primary in Wisconsin. Number one, that there was a clear indication because of the proliferation that the Democrats did not have a viable national candidate when you look at who won in New Hampshire and who won in Florida and who won here and the next place and secondly, if there was any winner at all it was Teddy Kennedy. Now Teddy's been getting a free ride, but not being drawn into this, and if you have Dole, Dale and whoever else bring this up that --

P Why wouldn't you say that Teddy is going to be the nominee.

M Yeah, Teddy's getting

P Rather than he's a winner -- I'd simply say that McGovern's a stomping horse for Kennedy and Lucey is the Kennedy man and it looks like Kennedy is going to be the winner of the nomination. Looks like Kennedy. None of the others have got the horses to win it. Smoke him out a little.

M That's right and then, what I would hope would come out of it -- is what the Republican National Chairman and so forth are saying

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M is that the reporters will be going to these other candidates and say "what do you think about what they are saying about Kennedy" and let's get them posturing themselves against Kennedy so that he doesn't get this free ride.

P It's clear, it's clear that this is a -- Mel Laird is saying that the reason Muskie has been really poleaxed there among other is that Lucey and the Kennedy Democrats have ganged up on him. They got behind McGovern, not for the purposes of supporting McGovern, but to kick the hell out of

M Muskie

P Muskie, and also, he said they did it for another reason: they didn't figure Hubert had a chance before Florida and didn't have time to change their course until then or they'd all been for Hubert, but then anybody but Kennedy. Their purpose was to stop Muskie. But they've done that -- now Hubert, of course, has come in.

H They can't stop Hubert! (Laughter)

P They can't stop him if he wins this time.

P I think he will. I think he'd be first -- McGovern second -- and if Wallace is third, I think Muskie then would be fourth, but that's just a guess.

M I don't know how the

P Maybe Muskie will be -- Muskie will be second.

M Well, I doubt that very much.

P He's up there though. He had a big telethon push which I
(unintelligible).

M I don't think Muskie is going to have that drawing power up
there.

P You know the thing that occurred to me is that -- it seems to
me that as you look around the states -- the big states --
New York is one that I don't think you could (unintelligible) --
you really have to be personally in charge out there, and
anybody else I let in there, you know what I mean, because
you've to play the game and Rockefeller's got to carry it for
us hasn't he? Have to get off his ass, but you've got to play
the game with those conservatives, right? And so there the
problem

H Incidentally, did you see Bill Buckley's -- you see that letter
he sent out?

P No. What's he done now?

H He sent out a letter to the -- I don't know whether it's a
circulation building letter or something to the publication people
or whatever it is - but anyway, the whole pitch is -- "I've been
asked about this coming election or something, and I will say
proudly I will vote for Richard Nixon for President. I consider

-20-

H any one of the Democratic possibilities would be a disaster for this country." He said that "Nixon will be a problem too

M or P (Unintelligible)

H but that he has the job" -- no, he insists that "he has the job now of doing just what the conservatives want of pulling together a sufficiently broad coalition in order to be elected to govern." He said "I would not vote for Nixon as editor of a conservative journal."

P That's very good.

H And he said "I don't feel that we should abandon our principles but when we get to the election we must vote (unintelligible).

P Then he sort of sticks it to Ashbrook?

M Well, Bill's written

H He said he was going to do that

M A couple of column's you know that go in this

P How does he, well how does he deal with Ashbrook. I mean does he want him to get a good vote anyway?

H Yeah, because that's forcing you

M That's the signal

H To take a conservative position.

P I mean I watched Ashbrook closely

H You watch Ashbrook closely and get your guidance from (unintelligible)

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- P What I was going to say is -- in Pennsylvania, who do we have there that you would say -- you also will handle New Jersey won't you? I don't think (unintelligible) or were you using Sears or others
- M Yeah, Sears.
- P What about the list of the big states? We got New York and New Jersey. What would you say about Pennsylvania? (Unintelligible). Or do you just divide the state up?
- M Oh, do you mean who do we have in Pennsylvania?
- P The boss, I mean it's a (unintelligible). Who would you consider to be the top man?
- M That's really divided into regions but Arlen Specter is -- well
- P Specter is our general
- M Well he's our campaign director. Scott and Schweiker are the co-chairmen, and Arlen --
- P Specter is the statewide chairman?
- M Yes.
- P Good.
- M Well he's really going to work.
- P Well he's good.
- M And a
- P And he wants to be governor doesn't he?
- M That's correct.

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P Whether he wants to be (unintelligible), he's good don't you think with the Jews and with the Blacks and (unintelligible)? Also he's with us.

M Yes, and also he's -- we're deciding whether Rizzo's campaign manager should go to work for Arlen Specter now or wait and a

P How's his relationship with the Pittsburgh crowd, all right?

M They're good, because we've got other lines

P But Specter -- that's the guy -- in other words you wouldn't be in direct -- you wouldn't need anybody here to watch (unintelligible)?

M We're going to have to have people to do that, but what I've done

P (Unintelligible) you ought to handle that

M Well let me.

P On a real tough job, I would not let them out of your hands. I don't know whether you can do them all but

M No, I've already decided that in California, Illinois, Ohio, Pennsylvania, New York and New Jersey, that I am going to have a direct line through to the people. The other states we will have these surrogates

P Surrogates.

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M Regional people. Now, what I want is what we've talked about before, it's -- well, use the example of California: If we can get Cap Weinberger, if he's not so far "Hatched" that he can't do it, Cap could be a state desk man or auditor, or whatever you want to call it, somebody with the expertise of politics in California -- can go in and see what's going on up in the Valley under Monagan or what Packard is doing and his people and San Francisco, or what they're doing here there and the next place. I expect to have somebody like that for each of these big states. But I think

P I'm afraid he is "Hatched," but a

M Is he?

P (Unintelligible)

M Cap is a pretty bright able guy and he's been immersed in politics out there as state chairman

P Wonder if we should pull him out of the Budget?

M He gets along with everybody.

H Well, he doesn't want to stay in the Budget.

P I know he doesn't want to stay there. Can we pull him out and put him in an agency. He might be just as good a man as you could find around California.

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M Can he take a leave?

H Just resign.

P Let Carlucci or somebody else be Budget Director if he resigns, and

H After you get a Budget Director.

P I'd have him as full time. George could find somebody

H You've George on top of it.

P George Shultz can run the Budget, (unintelligible). I really think the thing for Cap -- so important that you want him (unintelligible). Illinois?

M Well, we've got, of course, Tom Houser is a good operator and
- I haven't got anybody yet.

P Pretty good, yeah

M Tom Houser.

P He's Percy's man, you know.

M No.

P No, I meant he was.

M He was.

P I mean his

M He broke with Percy you know when Percy went back on his commitment to vote for you -- or to me to vote for you at the Convention.

P Well he helps us in the area we needed him (unintelligible)
and so forth, and Texas?

M And we have

P How does Texas stand?

M We have Al -- we have John Connally.

P (Unintelligible).

M We have Al Topper (phonetically) downstate.

P Oh, good.

M Who is, you know

P (Unintelligible).

M And so -- plus a lot of good regional people -- even a top flight
guy in the city of Chicago which is a real good politician. In
Texas, I've been talking to John Connally about it.

P Have you? Good.

M John's feeling is that by the time they get to the Democratic
Convention he is not even sure that Bentsen or the Lt. Governor

P Barnes

M Ben Barnes or these people should even go to that Convention.
I guess it's his line. What he is angling for in effect, is keep
your options open. Don't get tied in with an organization now,
because you may want to bring

P Texans for Nixon, I know, I know (unintelligible).

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M Well, on the other side of the coin, of course, our Republican friends are getting itchy and I keep telling them to go out and write you some more Republicans -- but they say well, we're going to lose good people to the gubernatorial campaign, etc., etc.

P Let 'em go.

H So what?

P Let them go. They don't -- that doesn't make any difference. Hold it firm. We need Texas Democrats. We don't win Texas -- we haven't won it yet -- but you don't win it with Republicans. We never have. And let's just face it, that's the way the score is. Tower has won it once or twice but -- accidents, pure accidents.

(Unintelligible) any Democrat, believe me, by any Democrat (unintelligible) committee of that sort is better. Rather than that fellow who is finance chairman down there. What's his name?

H Al Fay

P Al Fay

M You mean Peter O'Donnell? Peter's left.

H He's left?

M Peter quit. He's (unintelligible) national committee (unintelligible).

H I'll be darned.

M Agnitch is the new national committeeman.

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P Yeah.

H O'Donnell was such a horrible whiner.

P Ohio!

M Ohio we still have the Bliss.

P Bliss is still.

M Situation.

P I think going for the old timer there is a bad idea. What do you think Bob?

H I think it is a good idea.

M Well, we have to, Mr. President -- almost have to -- to keep the Taft forces and the Rhodes forces and the rest of them.

P Well, we've got to go for the young too and the rest, but I guess Bliss is

M Well, Bliss is going to come back to work for me, you see, he wants the recognition.

P Great.

M He's not going to be the guy to come and do the nuts and bolts, but he wants the identification with you and back here to re-establish his

P Let me ask you this. We have these curious reports, which, you've seen these of course, (unintelligible) out of Michigan showing we have a chance in Michigan. Do you think we ought to take a whirl at it or not?

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M We're going to take a whirl at it. We're going to take a whirl at all of them.

P Well (unintelligible) even Minnesota?

M Well, I mean a whirl at them to the point where we're going to organize to the teeth and then when it comes to where you're going to spend the money on your media, your mail, your telephone, and things like that, we'll make the judgment a little further down the line.

P Michigan judgment could be very interesting because if it gets really heated up on busing, if it could, and we're on the one side and they're on the other side, you might win the state on that issue. You agree Bob?

H Sure.

M In addition to that, look what you've done for the automobile industry.

H That was a year ago.

P Well, still

M It still can be sold

P Sold lots of cars

M And, Milliken is all aboard and he's working hard, and we've got a good chairman out there.

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P I'd even run -- I'd even have some sort of a campaign on that.
I'd even do something in Massachusetts. Do you know why?
Solely because I think it isn't good to let any one area just go
completely.

M No, you can't, because of its rub off on Vermont.

P (unintelligible)

M We've got an added starter there who wants to be the chairman
to get out and work and that's the Governor.

P He does?

H Sargeant?

M Why not? He gets

P Won't hurt us!

M He gets on the tube.

H (Unintelligible).

P Well, he's a good liberal fellow.

H He really wants to get in?

M Yep -- and I think we can get it cleared with Brooke and Volpe
and all the rest of them.

P I think there's a great deal to be said to go for every state.
You know the line I took with these people -- the governors
which they all like to hear -- but you take, I was telling Bob
the other day that in terms of our own plan, of course, we've
got to look at everything you can without killing ourselves or
without being over exposed. But, I feel very strongly that

-30-

P Wallace in or out, we ought to hit of the southern states that I ought to get to Georgia, Alabama, Louisiana, and Mississippi, because I think if we can sweep that South and of course Texas is the big question mark (unintelligible).

M Did I tell you about Connally's poll that Barnes ran down there? Shows the President did very well -- quite different from our polls.

P In Texas?

M Yep.

P Our poll shows five points behind.

M With Muskie, yeah.

P Of course that would be

H That was awhile back.

M Quite awhile back. Yeah. But John Connally's impression is that you're in good shape in Texas with or without Wallace.

P Well, that's hard to say (unintelligible).

M Well we don't have that liquor thing down there this year that we had in '68. That was what really did us in.

H (Unintelligible).

P You know (unintelligible) really kicked Muskie in (unintelligible) that Harris Poll showed him slipping in the trial heats. Apparently (unintelligible) something similar (unintelligible).

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M Well, this has a hell of an impact because the press picks it up and drums on it day in day out.

H Especially because he had been (unintelligible).

P (Unintelligible) Gallup (Unintelligible) even, even in February and now (unintelligible).

M When is this coming out?

P I've got to see the Ambassador -- he's leaving -- he's leaving.

M Oh, is he?

H Going home.

P Yep. Well, anyway John. (Voices fade).

H French Ambassador's name is Kosciusko. Figure that one out.

P For your -- I can't tell you too strongly now with regard to the San Diego thing -- got something to do, do it! Cut our losses and get out. But I do think that from a PR standpoint, Bob, at this time we really ought to.

H (Unintelligible) ahead of time.

P To build (unintelligible). Start a fight right now. Play hard (unintelligible) no question.

M As soon as we see any light through it at all.

P I'd start right now.

M Give them the guidelines and put them right on it and let them stay right on it. (Unintelligible).

P John, I would start the fight right now. (voices fade away).

P Well, Mr. Ambassador, (The French Ambassador and Dr. Henry Kissinger enter)

13. During the days following the publication of the "Dita Beard" memorandum on February 29, 1973, several of the top White House aides were involved in investigating the allegations contained in that memorandum.

The actual settlement of the ITT cases as a quid pro quo for an ITT commitment to the Republican National Convention was the focal point of the Kleindienst Confirmation Hearings which began on March 2, 1972. Peter Flanigan, a White House aide, was the object of considerable attention from the Senate Judiciary Committee and press during the coverage of these hearings.

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Mr. PICKLE. If you sent him to Denver, Colo., what was the purpose of the interview?

Mr. COLSON. We were trying at that point in time to determine whether or not that was in fact an authentic memorandum. If you will recall the circumstances at that time the entire thrust of the case that was being built against Mr. Kleindienst, the entire thrust of the case in controversy in the Senate Judiciary Committee turned on the language of that memorandum. The question of whether or not that was in fact an authentic memorandum. The question of whether the facts presented in that memorandum were facts or were not facts were very central to the question of whether Mr. Kleindienst would be confirmed. Those were very serious accusations ostensibly made in Mrs. Beard's memorandum.

It became very critical for us—I say “as”, the administration, to know whether in fact that was Mrs. Beard's memorandum or whether it was a forgery or whether it was prepared at some other time for some other purpose, and we had reason to believe the memo was not accurate. The only way one could find out for sure was to go to the person who allegedly wrote it and find out.

Mr. PICKLE. Is it true, Mr. Hunt went to Denver in disguise with a wig on and slipped into the hospital?

Mr. COLSON. No, I never sent Mr. Hunt in disguise or with a wig on.

Mr. PICKLE. I didn't ask that, I asked did he go there and go in disguise?

Mr. COLSON. I have had that reported that he did but I do not know for a fact he did.

Mr. PICKLE. You don't doubt it since it has not been denied?

Mr. COLSON. I have no reason to doubt it.

Mr. PICKLE. Why did he put a disguise on if you were properly concerned about Mr. Kleindienst, why didn't you put on your Sunday-go-to-meeting suit and fly out there and tell the press you were going to do it?

Mr. COLSON. I didn't suggest to Mr. Hunt how he should conduct the interview. I simply told him to go out and find out whether it was her memorandum, whether she had written it, and if it was true.

Mr. PICKLE. You didn't discuss anything about putting on a disguise and going into the hospital?

Mr. COLSON. No, sir.

Mr. PICKLE. That was never mentioned, that was Mr. Hunt's idea entirely?

Mr. COLSON. Yes, it was.

Mr. PICKLE. Did you concur with it?

Mr. COLSON. I don't know that the subject came up quite that way. I would have to trace a little more of the background to give you an accurate understanding of what happened. There had been growing evidence in the early days of March that the memorandum was not authentic. Mr. Hunt wrote me a memorandum I believe on the 10th of March in which he said that information had come to his attention that the memorandum was not authentic. He proposed in the memo-

Text of Kleindienst Statement on I.T.T.

Special to The New York Times

WASHINGTON, Oct. 31—Following is the text of a statement issued by former Attorney General Richard D. Kleindienst in defense of his role in an antitrust case against the International Telephone and Telegraph Corporation:

Three weeks ago I had a conversation at the Special Prosecutor's office with Mr. Cox and two of his assistants concerning the handling of the I.T.T. antitrust case during my tenure as Deputy Attorney General. A story in The New York Times yesterday, which was repeated on the networks and in newspapers around the country, contained a very specific report of one part of that conversation.

As a result of the leak to The Times, I have been accused on national television of having given false information to the Senate Judiciary Committee at the time of my nomination as Attorney General. That accusation is false.

My conversation with Professor Cox was held under strict assurances of confidentiality, and as Professor Cox has stated, was a serious breach of faith on the part of the Special Prosecutor. I continue to regard my conversation with Professor Cox as confidential, but because of the distorted and misleading accounts of my conduct that have appeared in the press, I feel compelled at this time to relate an important aspect of the event which was not leaked.

On Monday afternoon, April 19th, 1971, Mr. Ehrlichman abruptly called, and stated that the President directed me not to file the appeal in the Grinnell case. That was the last day in which that appeal could be taken. I informed him that we had determined to take that appeal, and that he should so inform the President. Min-

utes later the President called me and, without any discussion ordered me to drop the appeal immediately thereafter. I sent word to the President that if he persisted in this direction I would be compelled to submit my resignation. Because that was the last day in which the appeal could be perfected, I obtained an extension of time from the Supreme Court to enable the President to consider my position.

The President changed his mind and the appeal was filed 30 days later in the exact form it would have been filed one month earlier. Thus, but for my threat to resign, the Grinnell case would never have been appealed and we would never have been able to obtain what even Professor Cox has characterized as a settlement highly advantageous to the United States.

At the time of my testimony before the Senate Judiciary Committee, I was not asked whether I had had any contacts with the White House at the time of this decision, and I did not deny any such contacts.

Focus of the Hearings

The focus of the hearings dealing with the I.T.T. affair was the negotiations in May, June and July of 1971 leading to settlement of the pending cases on July 31. I was questioned at length concerning these negotiations and particularly with reference to any conversations or meetings I might have had with Mr. Peter Flanigan of the White House staff. It was in the context of those questions that I made the statement quoted on C.B.S. news last evening, as follows:

"In the discharge of my responsibilities as the Acting Attorney General in these cases, I was not interfered with by anybody at the White House. I was not importuned. I was not pressured. I was not directed."

It was also in response to

a question by Senator Fong concerning Mr. Flanigan that I made the other statement quoted by C.B.S., as follows:

"... I would have had a vivid recollection if someone at the White House had called me up and said, 'Look, Kleindienst, this is the way we are going to handle that case.' People who know me, I don't think would talk to me that way, but if anybody did it would be a very sharp impact on my mind because I believe I know how I would have responded. No such conversation occurred."

Both of these statements, taken in the context in which they were made, were completely accurate.

In short, I did not perjure myself or give false information to the Senate Judiciary Committee. A fair and objective reading of the transcript of my testimony will so indicate.

I deeply regret the circumstances which have compelled me to make this statement. However, in view of the serious breach of faith by the Special Prosecutor and the distorted treatment of my testimony in the press, I have no other choice. I have done no wrong.

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RICHARD G. KLEINDIENST

THURSDAY, MARCH 2, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Scott, Thurmond, Cook, Mathias, and Gurney.

Also present: Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. The committee will be in order.

Mr. Kleindienst, hold up your hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KLEINDIENST. I do.

Mr. McLAREN. I do.

Mr. ROHATYN. I do.

TESTIMONY OF RICHARD G. KLEINDIENST, ACTING ATTORNEY GENERAL, ACCOMPANIED BY RICHARD W. McLAREN, FORMER ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION; FELIX G. ROHATYN, DIRECTOR, INTERNATIONAL TELEPHONE & TELEGRAPH CORP.; AND WALKER B. COMEGYS, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

The CHAIRMAN. This hearing was called at the request of Mr. Kleindienst.

Now, the way the Chair thinks the proper procedure would be is to hear Mr. Kleindienst, Mr. McLaren, and the other gentlemen, and then throw the matter open for questions by whoever on the committee wants to ask them.

Now, Mr. Kleindienst, you may proceed.

Mr. KLEINDIENST. Thank you, Mr. Chairman, and members of the committee.

First I want to express my personal appreciation to the committee for providing me this opportunity at the earliest possible moment to provide the committee the information that I have with respect to some of the charges that have been made in the public press in the last several days.

(95)

The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the settlement of Government antitrust litigation for partisan political reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate, I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

I am here this morning with respect to the matters involving the ITT Co. and its antitrust matters before the Department of Justice to tell you what I did. And I have here with me this morning Judge McLaren, the Federal District Judge of the Northern District of Illinois, and Mr. Felix Rohatyn, a member of the board of directors of ITT, being the two persons with whom I had any dealings in connection with these matters to also have them tell you what they did. And to the extent that it involves me, to have them tell you what I did.

I was involved in any way with respect to these antitrust matters by virtue of the fact that the Attorney General, in 1969, disqualified himself from the consideration of any matters involving the I.T. & T. Corp. The reason why he disqualified himself is that his former law firm has performed legal services, I believe, for subsidiaries of I.T. & T. and, therefore, felt from the standpoint of proper conduct that he should not become involved in any matter or consideration or decision that would involve these companies.

In 1969, at the recommendation of then Assistant Attorney General McLaren in the Antitrust Division I signed as the Attorney General in these cases, and as required by law, the complaints or authorized the filing of complaints against the acquisition or proposed acquisition by I.T. & T. in connection with three corporations, the Canteen Corp., the Grinnell Corp., and the Hartford Corp. Those complaints and the nature of those actions will be discussed in more detail, I believe, by Judge McLaren this morning.

But, in any event, all three of those complaints, seeking on behalf of the Government to prevent their acquisition by I.T. & T. were filed in the year 1969 by the Department of Justice.

I really had very little to do or relationship with or knowledge about the ordinary process of those cases in the year 1969. Indeed, I have no recollection of having any meetings other than routine, or of a very nominal nature in that year with respect to any one of those cases.

Approximately April 20, 1969, I received a call from Mr. Felix Rohatyn, who is sitting here to my left, in which he identified himself to me as a member of the board of directors of I.T. & T., and he stated that he was not a lawyer and that he would like to come to my office to discuss some of the economic consequences of the policy of the Department of Justice to require by I.T. & T. a divestiture of the Hartford Insurance Co. As a result of our discussion on the telephone Mr. Rohatyn came to my office on April 20, 1969. He again opened up the conversation, and incidentally, only Mr. Rohatyn and I were

THE WHITE HOUSE

WASHINGTON

March 13, 1972

MEMORANDUM FOR: JOHN DEAN

FROM: CHARLES COLSON

One of our great problems in the ITT fiasco has been our inability to present directly and succinctly some obvious strong facts on our side. The attached is an attempt to summarize the three key points that need to be made over and over and over. I thought this might be useful to you.

There has been so much innuendo, so much political rhetoric and so many smear charges in connection with the ITT case that I don't wonder that people may be confused about it. A few facts need to be put in perspective:

1. In two weeks of hearings before the Senate Judiciary Committee there has not been one scintilla of evidence of any wrong doing, not one scintilla of evidence that there was any connection between the anti-trust decree in the ITT case and ITT's offer to a civic committee in San Diego to help San Diego make a bid to obtain the Republican National Convention.
2. The press continually reports "ITT's contributions to the GOP". The simple fact is that Sheraton Hotels, a subsidiary of ITT, made a pledge to the civic interests in San Diego to help guarantee the financing necessary for the city to obtain the convention in San Diego. Whether San Diego got the convention or Chicago or Miami, would be of little financial concern to the Republican National Committee and the financing of this year's political campaign. In short, it was not the Republican Party to whom any pledge of financial assistance was offered.

3. Perhaps most importantly, the government did not, as has been charged, "drop" the ITT case. It forced upon ITT a tough, hard settlement requiring ITT to divest itself of 6 major corporations and to agree not to engage in any further acquisitions for 10 years without Department of Justice approval. It is perhaps fair to note that this decree, one of the toughest anti-trust decisions in history and the largest, was achieved by this Administration even though the prior Administration had decided not to pursue anti-trust litigation against this same corporation. It is important also to note that this Administration has a record second to none in vigorous anti-trust enforcement. Most lawyers and, indeed, most businessmen, to their own displeasure, agree that we have been the most vigorous enforcers of the anti-trust laws in this country. Finally, the Solicitor General of the United States and former Dean of the Harvard Law School, Erwin Griswold, appointed incidentally to this position by our predecessor Democratic Administration, testified under oath last week not only that this was a very tough settlement imposed on ITT, but that had the government not obtained this settlement it probably couldn't have sustained the burden of its case in the Supreme Court. Dean Griswold was one of the primary officials whose judgment was considered in reaching the ITT settlement.

What the American public has been subjected to in the past two weeks has been a campaign of smear and innuendo by one of the most disreputable

columnists in America; Jack Anderson has tried to slander decent government officials all the way from Dean Griswold to President Nixon with half truths and fourth-removed hearsay evidence. The simple facts don't support his charges; indeed, the facts are quite to the contrary, although they have been largely overlooked in all of the political harangue that has been so widely reported.

Kleindienst Faces Further Questions

By Sanford J. Ungar
Washington Post Staff Writer

Richard G. Kleindienst, President Nixon's embattled nominee for Attorney General, is to return to Capitol Hill for the seventh time today to face questioning by the Senate Judiciary Committee.

The committee, sharply divided on whether to send Kleindienst's nomination to the Senate floor, voted 9-to-5 yesterday to extend the confirmation hearings for one more day to review new inconsistencies in the record.

Beating down Democratic efforts to call other witnesses, however, the committee imposed upon itself a 5 p.m. deadline for a final vote on whether to recommend that Kleindienst be confirmed for the Cabinet post vacated March 1 by John N. Mitchell.

Sens. Edward M. Kennedy (D-Mass.) and John V. Tunney (D-Calif.) immediately threatened a protracted floor fight to defeat Kleindienst or prevent a vote altogether unless further hearings are convened.

Senate Democratic Whip Robert C. Byrd of West Virginia, who is acting as majority leader while Sen. Mike Mansfield (D-Mont.) is in China, acknowledged that Senate consideration of Kleindienst could take "several weeks."

At the same time, Tunney demanded that the Justice Department launch an investigation of whether any of the wit-

See KLEINDIENST, A7, Col. 1

KLEINDIENST. From Announcements at the Kleindienst hearings have committed perjury.

If the Judiciary Committee endorses Tunney's demand — as he predicted it would — that could throw another stumbling block in the path of Kleindienst's approval by the Senate.

The questioning of Kleindienst today, limited to a maximum of 6½ hours by the committee's 5 p.m. deadline for a report to the floor, is expected to focus on the disclosure by White House aide Peter M. Flanigan in a letter Monday in which he said he had several conversations with Kleindienst last year about a settlement of antitrust cases against the International Telephone and Telegraph Corp.

Flanigan, who gave limited testimony before the committee last week, said in the letter that he passed along ITT's complaints about a proposed settlement to the then deputy attorney general and also informed him when an outside consultant had completed his financial analysis of ITT's arguments.

Kleindienst, testifying last month, said he did not recall discussing the ITT matter at the White House, but suggested there might have been "casual reference" to it in other conversations there.

On March 8, however, the nominee specifically said before the committee that "I had no conversation with Mr. Flanigan" at the time the outside financial analysis of ITT was submitted by Wall Street in-

vestment banker Richard J. Ramsden.

The Judiciary Committee has been minutely probing the course of administration policy in the ITT antitrust cases, because of an alleged company memorandum published by columnist Jack Anderson linking the settlement to an ITT pledge of at least \$300,000 to help bring the Republican National Convention to San Diego this year.

Democrats on the committee are also expected to take the opportunity today to quiz Kleindienst about why he retained Harry D. Steward as the U. S. attorney in San Diego despite a finding by the Criminal Division that Steward had engaged in "highly improper" conduct.

Tunney failed yesterday in his effort to persuade the committee to call further witnesses familiar with Steward's decision to quash a grand jury subpoena of a prominent San Diego Republican during an investigation of illegal contributions to President Nixon's 1968 campaign.

Sen. James O. Eastland (D-Miss.), chairman of the Judiciary Committee, predicted that Kleindienst would have nine or 10 votes in his favor during today's final review of his nomination.

"I don't think there are any loose ends," Eastland told reporters. "I don't think one day will bring out anything new."

Tunney agreed with Eastland's prediction of the final vote in committee, but added that "I think we have a very

Kleindienst Approved, 11-4, As Panel Ends ITT Probe

By Sanford J. Untar
Washington Post Staff Writer

The Senate Judiciary Committee voted 11 to 4 last night to reaffirm its recommendation of two months ago that Richard G. Kleindienst be confirmed as Attorney General.

But the endorsement fell short of the unanimous approval given Kleindienst by the committee on Feb. 24.

A week after that original vote, the confirmation hearings on the Kleindienst nomination were reopened, at his own request, when allegations were raised that he was involved in the settlement of three antitrust cases against the International Telephone and Telegraph Corp. in exchange for ITT's pledge of at least \$200,000 to help bring the Republican National Convention to San Diego this year.

The ITT controversy and other issues raised against Kleindienst during the hearings could still threaten his confirmation by the full Senate. Democrats pledged yesterday to wage a protracted floor fight against Kleindienst.

In a final day of testimony before the Judiciary Committee yesterday, Kleindienst said he was unable to recall the details of several contacts with White House aide Peter M. Flanigan last year concerning the ITT antitrust cases.

He insisted, however, that he had made an "honest, sincere and conscientious effort" to clear up inconsistencies in the hearing record.

President Nixon's nominee to succeed John N. Mitchell as head of the Justice Department

received the votes of all Republicans on the Senate committee, as well as four Democrats.

Only Sens. Edward M. Kennedy of Massachusetts, Birch Bayh of Indiana, Quentin N. Burdick of North Dakota and John V. Tunney of California, all Democrats, voted against favorably reporting Kleindienst's name to the Senate floor.

Sen. John L. McClellan (D-Ark.), who has not attended

any of the 24 days of hearings on the nomination, was the only member of the committee not voting.

But Sens. Robert C. Byrd of West Virginia, the Senate Democratic Whip, and Philip A. Hart (D-Mich.) announced that their votes in committee did not preclude a change of heart when Kleindienst's name comes up before the full Senate.

A final vote on the Kleindienst nomination is still weeks away and, if Kennedy, Tunney and other opponents have their way, may never come up at all.

KLEINDIENST, From A1

dienst nomination is still weeks away and, if Kennedy, Tunney and other opponents have their way, may never come up at all.

Judiciary Committee Chairman James O. Eastland (D-Miss.) said all committee members would have until May 5 to submit their "individual views" on the nomination.

Exactly when the Kleindienst nomination comes up on the floor will be decided by Senate Majority Leader Mike Mansfield (Mont.) on his return from a visit to China with his Republican counterpart, Hugh Scott of Pennsylvania.

Byrd has already announced, however, that if any senator places a "hold" on consideration of Kleindienst it will be respected for a week to 10 days.

Eastland, a firm supporter of Kleindienst, told reporters last night that debate on the Cabinet nominee can be expected to last "several weeks," but that he was confident enough votes would be found to cut off any filibuster by Kleindienst opponents.

Defending against charges that he had deserted his Democratic colleagues on the Kleindienst nomination, Eastland said, "I'm for a good man. I'm not a party hack. Right comes above party."

Denied by ITT Head Geneen Insists He Didn't Know About Memo

By Sanford J. Ungar
Washington Post Staff Writer

Harold S. Geneen, president of the multibillion-dollar International Telephone and Telegraph Corp., testified yesterday that there was "absolutely no connection" between the settlement of three government antitrust cases against ITT and its contribution to help bring the Republican National Convention to San Diego this year.

In a late afternoon appearance before the Senate Judiciary Committee, the executive said "I know nothing" about a published memorandum by ITT chief lobbyist Dita D. Beard which linked the two matters.

Geneen conceded, however, that after Mrs. Beard's memorandum was published by syndicated columnist Jack Anderson, "some kind of documents were shredded" at the Washington office of ITT by corporate officials from New York.

He said he had ordered an internal investigation of the shredding incident and would report back to the committee about it, perhaps today.

"This was probably merely a reaction to the feeling that our files were open to the public than any attempt to prevent a review" of them, Geneen said.

In a 20-page prepared statement that he read, Geneen also insisted that ITT's commitment to support the GOP convention was \$200,000—rather than the \$400,000 that has been reported and was confirmed by the Republican National Chairman, Sen. Bob Dole (R-Kan.) last week.

ITT's Sheraton subsidiary made the financial commitment, Geneen said, to promote a new luxury hotel being built in San Diego, on the condition that it be President Nixon's headquarters during the convention.

Senators, foiled on witness, may try to block Kleindienst

By Charles E. Claffey 4/13/72
Globe Washington Bureau

WASHINGTON — The Senate Judiciary Committee yesterday voted against ordering White House aide Peter M. Flanigan and other Administration officials to testify in the nomination hearings of Attorney General-designate Richard G. Kleindienst.

But after the committee vote Sen. Sam J. Ervin Jr. (D-N.C.) reaffirmed his intention to try to block the Kleindienst nomination unless Flanigan appears to describe his role in the Justice Department's out-of-court settlement of an antitrust suit against International Telephone and Telegraph Corp. (ITT).

Ervin, a former North Carolina Supreme Court judge and an expert on constitutional law, said the White House claim — that executive privilege embraces communication between aides and people outside the Administration — is absurd.

Executive privilege, the Nixon Administration contends, forbids Congress from compelling executive branch officials to testify.

SEN. SAM ERVIN

"White House claim absurd"

ITT, Page 4

Kleindienst faces new hurdle

ITT
Continued from Page 1

Mr. Kleindienst adamantly opposed either the committee or the Senate taking any action whatsoever until those who appear before the committee," Ervin said. Ervin acknowledged the possibility for executive privilege involving communication between White House aides and the President, or between Administration officials making policy.

But he said there is "no justification" for the claim that executive privilege is designed to protect the President has any bearing on other employees and other persons "dealing with matters of public record such as antitrust law."

White House press secretary Ronald L. Ziegler repeated his statement that he "doesn't contemplate Mr. Flanigan testifying," and extended it to include another aide committee members want to question, William Timmons.

Sen. Robert C. Byrd of West Virginia, assistant

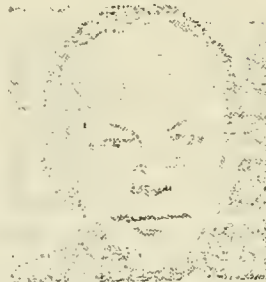
Democratic leader, said he also might vote against the nomination if Flanigan invokes executive privilege.

Asked if he would be satisfied if Flanigan submitted a statement rather than appear in person, Byrd answered that it "would depend on the statement."

Byrd, although a member of the committee, has not been present at any of the 15 days of hearings. He has attended the committee's executive sessions.

In its executive session yesterday, the committee rejected three motions, by a tie vote of 6-6, to subpoena Flanigan and other White House aides. The line-up was strictly according to party lines, with the chairman, James O. Eastland of Mississippi, abstaining.

The committee rejected a final motion to invite Flanigan to appear at a closed session by a vote of 9-4, with Sens. Byrd, Eastland, Marlow Cook (R-Ky.) and John V. Tunney (D-Calif.), favoring the idea.



RICHARD KLEINDIENST
... hearing continues



PETER FLANIGAN
... no subpoena

Sen. Tunney said the committee's votes will jeopardize Kleindienst's chances for Senate confirmation. "There is no way we can get the truth until Flanigan testifies," Tunney said.

Sen. Edward M. Kennedy said he expects the matter of Flanigan's testimony to come up in the committee again before the agreed-upon April 20 cutoff of the hearings.

In other developments yesterday, the committee voted to have two Denver physicians, Joseph Snyder and Ray Prior, examine ITT lobbyist Dita Beard, to determine if she is physically able to travel here and testify. She earlier was questioned by a subcommittee at a Denver hospital.

The committee also released a letter to Chairman Eastland from John W. Dean, counsel to President Nixon, advising members

that Flanigan's involvement in the ITT case was "as stated by Judge (Richard W.) McLaren in his sworn testimony."

McLaren, former chief of the Justice Department's antitrust division, testified that he used Flanigan as a conduit in acquiring the services of a New York investment analyst, Richard J. Ramsden.

Ramsden evaluated a presentation by ITT which said that if the conglomerate were forced to divest itself of three companies it had absorbed in a merger, the economic consequences would be devastating. Ramsden's evaluation supported the ITT claim, and weighed in McLaren's decision to settle out of court.

Former New York Federal Judge Lawrence E. Walsh, whose law firm represents ITT, testified yesterday afternoon concerning his dealings with Kleindienst in the case.

Walsh said he sent Kleindienst a memorandum in support of a review of the Administration's policy toward diversification by merger, in the hope it might relax its tough attitude toward merger.

He described his relationship with the Attorney General—designate as "friendly, and one of mutual respect."



14. The President left for an official visit to the People's Republic of China on February 17, 1972; he returned on February 28, 1972. He spent the weekend following his return at Key Biscayne, Florida. On May 20, 1972, the President went to Moscow, returning on June 1, 1972.

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Inspection of Tax Returns

Executive Order 11650. February 16, 1972

INSPECTION BY CERTAIN CLASSES OF PERSONS AND
STATE AND FEDERAL GOVERNMENT ESTABLISHMENTS
OF RETURNS MADE IN RESPECT OF CERTAIN TAXES
IMPOSED BY THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me by section 6103 (a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6103(a)), it is hereby ordered that returns made in respect of the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B and C of chapter 33, subchapter B of chapter 37, and chapter 41 of such Code shall be open to inspection by certain classes of persons and State and Federal Government establishments in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury decision 6543, relating to inspection and use of returns by such classes of persons and State and Federal Government establishments, approved by the President on January 17, 1961, the amendments thereto approved by the President on April 4, 1963, and March 18, 1965, and the amendment thereto approved by me this date.

RICHARD NIXON

The White House

February 16, 1972

[Filed with the Office of the Federal Register, 2:58 p.m.,
February 16, 1972]

Red Cross Month, March 1972

Proclamation 4110. February 16, 1972

*By the President of the United States of America
a Proclamation*

Born in war and raised in adversity, the American Red Cross has evolved many traditions in its universal quest

to ease human suffering, but none have served it so durably as its tradition of flexibility.

Since well before the turn of the 20th century, through times that tested the very soul of our humanitarian instincts, the Red Cross has proven equal to the challenges of each era with unfailing resourcefulness, zeal and compassion. Red Cross programs and services we have long taken for granted—from disaster relief and blood banks to nurse training and aid to military personnel—grew out of its pioneering approach in meeting generations of unprecedented crises.

This tradition has carried forward into the 1970s with undiminished vigor, and the Red Cross emblem may be found on banners flying over inner-city child care centers and drug abuse clinics. It is stamped on publications and continuing education materials dealing with ecological concerns, race relations, the advancement of the arts, and rural development.

And as a member of the global society, the Red Cross continues to fulfill its international enterprise of mercy, but again with a flexibility that makes its mission as vital and viable as at anytime in its history.

Now, THEREFORE, I, RICHARD NIXON, President of the United States of America and Honorary Chairman of the American National Red Cross, do hereby designate March, 1972, as Red Cross Month, a month when every citizen is asked to join, serve, and contribute in the same example of unselfish spirit that has characterized the Red Cross since its founding.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of February, in the year of our Lord nineteen hundred seventy-two, and of the Independence of the United States of America the one hundred ninety-sixth.

RICHARD NIXON

[Filed with the Office of the Federal Register, 11:54 a.m.,
February 17, 1972]

THE PRESIDENT'S TRIP TO THE PEOPLE'S REPUBLIC OF CHINA

*The President's Remarks at the Departure Ceremony on the South Lawn at
the White House. February 17, 1972*

*Mr. Vice President, Mr. Speaker, Members of the Congress, and Mem-
bers of the Cabinet:*

I want to express my very deep appreciation to all of you who have come here to send us off on this historic mission, and I particularly want to express appreciation to the bipartisan leadership of the House and Senate who are here.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, FEBRUARY 21, 1974

Their presence and the messages that have poured in from all over the country to the White House over the past few days, wishing us well on this trip, I think, underline the statement that I made on July 15, last year, when I announced the visit.

That statement was, as you will recall, that this would be a journey for peace. We, of course, are under no illusions that 20 years of hostility between the People's Republic of China and the United States of America are going to be swept away by one week of talks that we will have there.

But as Premier Chou En-lai said in a toast that he proposed to Dr. Kissinger and the members of the advance group in October, the American people are a great people. The Chinese people are a great people. The fact that they are separated by a vast ocean and great differences in philosophy should not prevent them from finding common ground.

As we look to the future, we must recognize that the Government of the People's Republic of China and the Government of the United States have had great differences. We will have differences in the future. But what we must do is to find a way to see that we can have differences without being enemies in war. If we can make progress toward that goal on this trip, the world will be a much safer world and the chance particularly for all of those young children over there to grow up in a world of peace will be infinitely greater.

I would simply say in conclusion that if there is a postscript that I hope might be written with regard to this trip, it would be the words on the plaque which was left on the moon by our first astronauts when they landed there. "We came in peace for all mankind."

Thank you and good by.

NOTE: The President spoke at 10:10 a.m. on the South Lawn at the White House. Following his remarks, the President, the First Lady, and members of the official party boarded the helicopter for the flight to Andrews Air Force Base. The ceremony was broadcast live on radio and television.

The White House had announced earlier, at Key Biscayne, Fla., on February 12, that the official party would include the following:

THE PRESIDENT

MRS. NIXON

SECRETARY OF STATE WILLIAM P. ROGERS

HENRY A. KISSINGER, Assistant to the President for National Security Affairs

H. R. HALDEMAN, Assistant to the President

RONALD L. ZIEGLER, Press Secretary to the President

BRIG. GEN. BRENT SCOWCROFT, Military Assistant to the President

MARSHALL GREEN, Assistant Secretary of State for East Asian and Pacific Affairs

DWIGHT L. CHAPIN, Deputy Assistant to the President

JOHN A. SCALI, Special Consultant to the President

PATRICK J. BUCHANAN, Special Assistant to the President

ROSE MARY WOODS, Personal Secretary to the President

ALFRED LE S. JENKINS, Director for Asian Communist Affairs, Bureau of East Asian and Pacific Affairs, Department of State

JOHN HOLDRIDGE, Senior Staff Member, National Security Council

WINSTON LORD, Special Assistant to Dr. Kissinger

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, FEBRUARY 28, 1972

Our communiqué indicates, as it should, some areas of difference. It also indicates some areas of agreement. To mention only one that is particularly appropriate here in Shanghai, is the fact that this great city, over the past, has on many occasions been the victim of foreign aggression and foreign occupation. And we join the Chinese people, we the American people, in our dedication to this principle: That never again shall foreign domination, foreign occupation, be visited upon this city or any part of China or any independent country in this world.

Mr. Prime Minister, our two peoples tonight hold the future of the world in our hands. As we think of that future, we are dedicated to the principle that we can build a new world, a world of peace, a world of justice, a world of independence for all nations.

If we succeed in working together where we can find common ground, if we can find common ground on which we can both stand, where we can build the bridge between us and build a new world, generations in the years ahead will look back and thank us for this meeting that we have held in this past week. Let the Chinese people and the great American people be worthy of the hopes and ideals of the world, for peace and justice and progress for all.

In that spirit, I ask all of you to join in a toast to the health of Chairman Mao, of Prime Minister Chou En-lai, and to all of our Chinese friends here tonight, and our American friends, and to that friendship between our two people to which Chairman Chang has referred so eloquently.

NOTE: The Chairman spoke at 8:25 p.m., local time, in the Shanghai Exhibition Hall. He spoke in Chinese and the President in English; their toasts were translated by an interpreter.

As printed above, this item follows the text of the White House press release.

RETURN TO WASHINGTON

Remarks of the President and the Vice President Following the President's Arrival at Andrews Air Force Base. February 28, 1972

THE VICE PRESIDENT. *Mr. President, Mrs. Nixon, distinguished guests, ladies and gentlemen:*

For more than a week we have witnessed through the miracle of satellite television, the sights and sounds of a society that has been closed to Americans for over two decades. We have been made aware of many new things in that society through this visit, Mr. President. We have witnessed much of what you have done with feelings of pride and pleasure and an immense curiosity that has certainly not been diminished by the amount of attention paid by the media to this visit.

I must confess that we have been surprised to some extent by your facility with chopsticks, Mr. President, and by the equal facility of the Chinese orchestra which rendered "America The Beautiful."

But I will say that the week's undertakings were intensively covered—I think that is the understatement of this week, Mr. President—and we enjoyed every minute of it as we watched with pride and approval the way you and the members of your party and our gracious First Lady conducted yourselves.

Weekly Compilation of

PRESIDENTIAL DOCUMENTS

*Week Ending Saturday, June 3, 1972*THE PRESIDENT'S TRIP TO AUSTRIA, THE SOVIET UNION, IRAN,
AND POLAND

Chronology of Events

Saturday, May 20

The President and Mrs. Nixon boarded the Spirit of '76 at Andrews Air Force Base for the flight to Salzburg, Austria. (For the President's remarks at the departure ceremony, see page 881 of the May 22 issue of the Weekly Compilation of Presidential Documents.)

Arriving at Salzburg Airport at 10:30 p.m., they were greeted by Chancellor Bruno Kreisky of the Federal Republic of Austria.

Sunday, May 21

The President and Chancellor Kreisky met for discussion at Schloss Klesheim.

Mrs. Nixon entertained Mrs. Kreisky at tea at Schloss Klesheim.

The President and Mrs. Nixon were then guests of the Chancellor and Mrs. Kreisky at luncheon at the Kobenzl Hotel (see page 914).

Monday, May 22

After departure ceremonies at Salzburg Airport, the President and Mrs. Nixon flew to Moscow, where they were greeted at Vnukovo II Airport by President Podgorny, Premier Kosygin, Foreign Minister Gromyko, and Ambassador Dobrynin.

In the afternoon, the President met for more than 2 hours with General Secretary Brezhnev.

In the evening, the President and Mrs. Nixon were guests of honor at a dinner hosted by the Presidium of the Supreme Soviet of the U.S.S.R. and the Government of the U.S.S.R. in Granovit Hall in the Grand Kremlin Palace (see pages 915, 916).

Tuesday, May 23

The President and members of the United States party met with Soviet officials in plenary session in Catherine Hall in the Grand Kremlin Palace.

In ceremonies in St. Vladimir Hall, the President and President Podgorny signed an agreement on environmental protection (see page 917). Secretary Rogers and Soviet Health Minister Petrovsky then signed an agreement on medical science and public health (see page 919).

The President and General Secretary Brezhnev met for 2 hours of discussion before the ceremony and for 3 additional hours later in the evening.

During the day, Mrs. Nixon visited a secondary school, toured the Moscow Metro, and had tea with Mrs. Brezhnev, Mrs. Podgorny, and wives of other Soviet officials in the Imperial Living Quarters in the Grand Kremlin Palace.

Wednesday, May 24

In the morning, the President went to the Aleksandrov Gardens to lay a wreath at the Tomb of the Unknown Soldier. He returned to the Grand Kremlin Palace for further discussions with Soviet leaders.

In afternoon ceremonies, the President and Premier Kosygin signed the space cooperation agreement (see page 920) and Secretary Rogers and Committee Chairman Kirillin signed the science and technology agreement (see page 921).

The President then went to Chairman Brezhnev's country residence for additional discussions.

The First Lady visited the Moscow State University and the GUM department store. In the evening, she attended a performance at the New Circus.

Thursday, May 25

The President met for 2 hours with Soviet leaders and a maritime agreement on the prevention of incidents at sea was signed by Navy Secretary Warner and Admiral Gorshkov (see page 922).

Mrs. Nixon visited the Bolshoi School of Choreography and the All-Union Fashion House for a showing of men's and women's clothing by Soviet designers.

In the evening, the President and the First Lady attended a performance of the "Swan Lake" ballet at the Bolshoi Theater.

Friday, May 26

After discussions on trade matters, a communiqué was issued on an agreement between Soviet leaders and President Nixon to establish a U.S.-U.S.S.R. Commercial Commission (see page 924).

that end the two sides decided to create a joint Polish-American Trade Commission.

3. The two sides will encourage and support contacts and cooperation between economic organizations and enterprises of both countries.

4. The two sides expressed their satisfaction with the expanding program of scientific and technical cooperation and appraised positively its mutually advantageous results. Last year's exchange of visits at the cabinet level, which gave attention to the development of scientific and technical cooperation, confirmed the desirability of continuing cooperation in this field.

The two sides expressed their interest in the conclusion of an inter-governmental agreement on comprehensive cooperation in science, technology and culture. Appropriate institutional arrangements will be established to promote work in these fields.

5. The two sides agreed that the increase of mutual economic and personal contacts, including tourism, justifies further development of transportation links between Poland and the United States by sea as well as by air. The two sides expect to sign in the near future an air transport agreement and to establish mutual and regular air connections.

6. The two sides expressed their interest in commemorating the five hundredth anniversary of the birth of Nicholas Copernicus and discussed ways of celebrating it.

7. Both sides welcomed the signing of the Consular Convention by Secretary of State William P. Rogers and Minister of Foreign Affairs Stefan Olszowski and the conclusion of an agreement on the simultaneous establishment on December 1, 1972 of new Consulates—in New York and Krakow, respectively. Both parties welcome these steps as concrete evidence of expanding relations between the two states.

8. The two sides emphasized the positive influence exerted on their mutual relations by the traditions of history, sentiment and friendship between the Polish and American peoples. A prominent part is played in this respect by many United States citizens of Polish extraction who maintain an interest in the country of their ancestors. The two sides recognize that this interest and contacts resulting from it constitute a valuable contribution to the development of bilateral relations.

Signed in Warsaw, June 1, 1972.

REPORT TO THE CONGRESS

The President's Address to a Joint Session of the Congress at the Conclusion of His Trip to Austria, the Soviet Union, Iran, and Poland. June 1, 1972

Mr. Speaker, Mr. President, Members of the Congress, our distinguished guests, my fellow Americans:

Your welcome in this great chamber tonight has a very special meaning to Mrs. Nixon and to me. We feel very fortunate to have traveled abroad so often representing the United States of America. But we both agree after each journey that the best part of any trip abroad is coming home to America again.

During the past 13 days we have flown more than 16,000 miles and we visited four countries. Everywhere we went—to Austria, the Soviet

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